

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
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NANCY M.
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_____)
NATURAL RESOURCES DEFENSE)
COUNCIL and BAY AREA PHYSICIANS)
FOR SOCIAL RESPONSIBILITY,)
)
Plaintiffs)
)
v.)
)
STEPHEN L. JOHNSON, Administrator)
of the United States Environmental Protection)
Agency, and THE UNITED STATES)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Defendants.)
_____)

Case No. _____

CONSENT DECREE

WHEREAS the Natural Resources Defense Council, and the Bay Area Physicians for Social Responsibility (“Plaintiffs”), filed the above-captioned complaint against Stephen L. Johnson in his official capacity as Administrator of the United States Environmental Protection Agency, and United States Environmental Protection Agency (collectively “EPA” or “Defendants”);

WHEREAS, Count 2 of this complaint alleges that EPA’s failure to promulgate a Stage II Disinfectants and Disinfection Byproducts Rule constitutes a failure to perform a non-discretionary duty under 42 U.S.C. 300g-1(b)(2)(C) of the Safe Drinking Water Act;

WHEREAS, by entering into this Consent Decree, the Parties do not waive or limit any claim or defense, on any ground, related to any final agency action taken pursuant to this Consent Decree;

WHEREAS, it is in the interest of the public, the parties and judicial economy to resolve the issues in this action without protracted litigation;

WHEREAS, by entering into this Consent Decree the Plaintiffs do not waive any claims and EPA does not waive any defenses, on any grounds, related to any claims that are not resolved by this Decree;

WHEREAS, the Court finds and determines that it has jurisdiction to enter this Decree; and

WHEREAS, the Court finds and determines that this Consent Decree represents a just, fair, adequate and equitable resolution of the claims raised in this action.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. GENERAL TERMS

1. The Parties to this Consent Decree are Plaintiffs and Defendants. The Parties understand that (a) Stephen L. Johnson was sued in his official capacity as Administrator of the United States Environmental Protection Agency; and (b) the obligations arising under the Consent Decree are to be performed by EPA and not by Stephen L. Johnson in his individual capacity.

2. This Consent Decree applies to, is binding upon, and inures to the benefit of Plaintiffs and Defendants and their respective successors, assigns, and designees.

II. DEFINITIONS

3. The following definitions shall apply to the terms referred to in this Consent Decree;

a. "Consent Decree" shall mean this document;

- b. "EPA" shall mean Stephen L. Johnson, the Administrator of the EPA and the United States Environmental Protection Agency
- c. "Plaintiffs" shall mean the Natural Resources Defense Council and the Bay Area Physicians for Social Responsibility;
- d. "Plaintiff's Complaint" shall mean the Complaint filed by Plaintiffs in the above-captioned case.
- e. "Stage 2 Rule" shall mean the Stage II Disinfectants and Disinfection Byproducts Rule cited at 42 U.S.C. 300g-1(b)(2)(C) and the Stage 2 D/DBP rule cited in volume 59 of the Federal Register, page 6361, Table III.13 (February 10, 1994).

III. TERMS OF THE CONSENT DECREE

4. The EPA Administrator shall, by December 15, 2005, sign for publication in the Federal Register a notice of final rulemaking promulgating the Stage 2 Rule. No later than ten business days following signature of such notice, EPA shall deliver the notice to the Office of Federal Register for prompt publication. Following such delivery to the Office of the Federal Register, EPA shall not take any step (other than necessary to correct any typographical or other errors in form) to delay or otherwise interfere with publication of such notice in the Federal Register. EPA shall make available to Plaintiffs, within ten business days following signature by the Administrator, a copy of the notice of final rulemaking required by this paragraph.

IV. EFFECTIVE DATE

5. This Consent Decree shall become effective upon the date of its entry by the Court. If for any reason the Court does not enter this Consent Decree, this Consent Decree shall not impose any obligations upon the Parties.

V. REMEDY, SCOPE OF JUDICIAL REVIEW AND CONTINUING JURISDICTION

6. The Court shall retain jurisdiction to effectuate compliance with this Consent

Decree and to consider any requests for costs of litigation, including attorney's fees, pursuant to Section XII of this Consent Decree.

7. Nothing in the terms of this Consent Decree shall be construed either (a) to confer upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Court of Appeals under section 1448(a) of the Safe Drinking Water Act, 42 U.S.C. § 300j-7(a), or (b) to waive any remedies plaintiffs may have under section 1448(a), 42 U.S.C. § 300j-7(a). Nothing in this Consent Decree shall be construed to confer upon this Court jurisdiction to review any decision, either procedural or substantive, to be made by EPA pursuant to this Consent Decree, except for the purpose of determining EPA's compliance with the terms of this Consent Decree.

8. Nothing in this Consent Decree alters or affects the standards for judicial review of final EPA action.

VI. RELEASE BY PLAINTIFFS AND RESERVATION OF RIGHTS

9. Upon approval and entry of this Consent Decree by the Court, this Decree shall constitute a final resolution between Plaintiffs and EPA of Count 2.

VII. TERMINATION OF CONSENT DECREE AND DISMISSAL OF CLAIMS

10. This Consent Decree shall terminate after fulfillment of all of the obligations of EPA under Paragraph 4 of this Consent Decree and publication in the Federal Register of the notice of final rulemaking referenced in Paragraph 4. Upon termination of the Consent Decree, Count 2 of the complaint in this action shall be dismissed with prejudice. EPA shall file an appropriate notice with the Court after EPA has fulfilled its obligations under Paragraph 4.

11. Notwithstanding such dismissal, if (1) Plaintiffs seek judicial review in the court of appeals of any action taken by EPA pursuant to this Consent Decree, and (2) the court of appeals rules that such challenge is not within the jurisdiction of the court of appeals, any dismissal of the instant action shall not preclude Plaintiffs from bringing a district court action challenging any such action taken by EPA pursuant to this Consent decree. Should any final action taken by EPA under paragraph 4 be vacated or remanded in whole or part by a United States court, any dismissal of the instant case shall not preclude Plaintiffs' right, which is expressly reserved, to argue in a new lawsuit that a claim exists for EPA to perform the actions sought by Count 2 of Plaintiffs' Complaint herein, and that the court in which such a lawsuit is filed has jurisdiction over such a claim. Nor shall any provision of this Decree preclude EPA's right, which is expressly reserved, to raise in any such new lawsuit all defenses, jurisdictional and otherwise, that it may have.

VIII. SAVINGS PROVISIONS

12. The obligations imposed on EPA under Paragraph 4 of this Consent Decree can only be undertaken using appropriated funds. No provision of this Decree 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 any other applicable federal statute.

13. Nothing in the terms of this Consent Decree shall be construed as an admission of fact or of law.

IX. DISPUTE RESOLUTION

14. In the event of a disagreement between the Parties concerning the interpretation or performance of any aspect of the Consent Decree, the disputing party shall provide the other

Party with written notice of the dispute and a request for negotiations. The Parties shall meet and confer in order to attempt to resolve the dispute. If the Parties are unable to resolve the dispute within fourteen (14) days of such notice, or such time thereafter as is mutually agreed, then either Party may petition the Court to resolve the dispute.

X. MODIFICATIONS AND EXTENSIONS

15. The Parties may extend the deadlines established in Paragraph 4 by written stipulation executed by counsel for the Parties and filed with the Court.

16. In addition, any provision of this Consent Decree may be modified by the Court upon motion by any Party to this Consent Decree demonstrating that such modification is consistent with law and in the public interest, after consideration of any response by the non-moving party.

a. If a Party files a motion requesting modification of a date or dates established by this Consent Decree and provides notice to the other party at least thirty (30) days prior to filing such motion, and files the motion at least sixty (60) days prior to the date for which modification is sought, then the filing of such motion shall, upon request, automatically extend the date for which modification is sought, provided that only one such extension may be obtained under this subsection. Such extension shall remain in effect until the earlier to occur of (i) a dispositive ruling by the Court on such motion, (ii) the date sought in the modification, or (iii) sixty (60) days after the original date for which modification is sought. The Party may move the Court for a longer extension.

b. If a Party files a motion requesting modification of a date or dates established by this Consent Decree totaling thirty (30) days or less, provides notice to the other

Party at least thirty (30) days prior to the filing of such motion, and files the motion at least seven (7) days prior to the date for which modification is sought, then the filing of such motion shall, upon request, stay the date for which modification is sought, provided that only one such extension may be obtained under this subsection. Such stay shall remain in effect until the earlier to occur of (i) a dispositive ruling by this Court on such motion, or (ii) the date sought in the modification.

c. If a Party seeking modification does not provide notice pursuant to subparagraph 16.a or 16.b above, that Party may move the Court for a stay of the date for which modification is sought. The Party seeking modification under this subparagraph 16.c shall give notice to the other Party as soon as possible of its intent to seek a modification and/or stay of the date sought to be modified. The notice provided under this subparagraph 16.c. and any motion for stay shall demonstrate why the Party could not have utilized the notification procedures set forth in subparagraphs 16.a and 16.b immediately above.

d. Any motion to modify the schedule established in this Consent Decree shall be accompanied by a motion for expedited consideration.

XI. AGENCY DISCRETION

17. Except as expressly provided herein, nothing in this Consent Decree shall be construed to limit or modify the discretion accorded the EPA by the Safe Drinking Water Act, or by general principles of administrative law.

18. Nothing in this Consent Decree shall be construed to limit or modify EPA's discretion after the EPA performs any action pursuant to this Consent Decree to alter, amend, or revise from time to time any such action, or to promulgate superseding regulations. Nothing in

this Consent Decree relieves EPA of the obligation to act in a manner consistent with the SDWA and other applicable law.

XII. COSTS

19. The deadline for filing a motion for costs of litigation (including attorney's fees) for activities performed with respect to Count 2 claims is hereby extended until 120 days after entry of this Consent Decree by the Court. During this time the parties shall seek to resolve informally any claim for costs of litigation (including attorney's fees) with respect to Count 2 claims, and if they cannot, will submit that issue to the Court for resolution. The Court shall retain jurisdiction to resolve any request for costs of litigation (including attorney's fees), notwithstanding any dismissal pursuant to paragraph 10 above.

XIII. NOTICE AND CORRESPONDENCE

20. Any notice, including correspondence, required or made with respect to this Consent Decree, shall be in writing and shall be effective upon receipt. For any matter relating to this Consent Decree, the contact persons are:

For the Plaintiffs

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Phone: (202) 667-4500
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dbaron@earthjustice.org

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For the Defendants

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United States Department of Justice
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Carol Ann Siciliano
Water Law Office
Office of General Counsel
U. S. Environmental Protection Agency
Mail Code 2355A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

Upon written notice to the other Parties, any Party may designate a successor contact person for any matter relating to this Consent Decree.

XIV. REPRESENTATIVE AUTHORITY

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

XV. USE OF CONSENT DECREE

22. This Consent Decree 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.

XVI. COMPLIANCE WITH OTHER LAWS

23. No provision of this Consent Decree shall be interpreted as or constitute a commitment or requirement that the EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or take actions in contravention of the Safe Drinking Water Act or any other law or regulation, either substantive or procedural.

FOR THE DEFENDANTS:

Kelly A. Johnson
Acting Assistant Attorney General

Dated: Nov. 16, 2005

By: Eric Hostetler

Eric G. Hostetler
Environmental Defense Section
Environment and Natural Resources Division
U. S. Department of Justice
P. O. Box 23986
Washington, DC 20026-3986

Of Counsel for the United States
Environmental Protection Agency:

Carol Ann Siciliano
Water Law Office
Office of General Counsel
U. S. Environmental Protection Agency
Mail Code 2355A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

FOR THE PLAINTIFFS:

Dated: _____

By:

A handwritten signature in black ink, appearing to read "David S. Baron", written over a horizontal line.

Jennifer C. Chavez
David S. Baron
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATURAL RESOURCES DEFENSE)
COUNCIL and BAY AREA PHYSICIANS)
FOR SOCIAL RESPONSIBILITY,)
)
Plaintiffs)
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v.)
)
STEPHEN L. JOHNSON, Administrator)
of the United States Environmental Protection)
Agency, and THE UNITED STATES)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Defendants.)

ORDER

UPON CONSIDERATION OF THE FOREGOING, THE Court hereby finds that this Consent Decree is fair and reasonable, both procedurally and substantively, consistent with applicable law, in good faith, and in the public interest. THE FOREGOING Consent Decree is hereby APPROVED AND ENTERED.

SIGNED and ENTERED this _____ day of _____ .

SETTLEMENT AGREEMENT

WHEREAS on November 17, 2005, Natural Resources Defense Council and Bay Area Physicians For Social Responsibility (“Plaintiffs”) filed a complaint in the United States District Court for the District of Columbia against Stephen L. Johnson, the Administrator of the United States Environmental Protection Agency, and United States Environmental Protection Agency (collectively “EPA” or “Defendants”), for EPA’s alleged failure to perform mandatory duties to promulgate three national Drinking Water Regulations under 42 U.S.C. §§ 300g-1(b)(2)(C) and 300g-1(b)(8);

WHEREAS, Plaintiffs allege in Count 1 of their Complaint that EPA has failed pursuant to 42 U.S.C. § 300g-1(b)(2)(C) to perform a nondiscretionary duty to promulgate a Long Term 2 Enhanced Surface Water Treatment Rule;

WHEREAS, Plaintiffs allege in Count 2 of their Complaint that EPA has failed pursuant to 42 U.S.C. § 300g-1(b)(2)(C) to perform a nondiscretionary duty to promulgate a Stage 2 Disinfectants and Disinfection Byproducts Rule;

WHEREAS, Plaintiffs allege in Count 3 of their Complaint that EPA has failed pursuant to 42 U.S.C. § 300g-1(b)(8) to perform a nondiscretionary duty to promulgate a Ground Water Rule;

WHEREAS, the parties have entered into a Consent Decree in the case of *Natural Resources Defense Council, et al. v. EPA*, (Case No. _____) setting forth certain EPA commitments under the Safe Drinking Water Act, 42 U.S.C. §§ 300g-1(b)(2)(C);

WHEREAS, in consideration of the actions that EPA has agreed to under the Consent Decree, the parties intend that the Consent Decree will constitute a complete and final settlement of Count 2 of Plaintiffs’ Complaint;

WHEREAS, the parties intend for this Settlement Agreement to set forth terms for certain matters that are not addressed in the Consent Decree; and

WHEREAS, Plaintiffs and EPA have agreed to a settlement of this action without any admission of fact or law, which they consider to be a just, fair and equitable resolution of the claims raised to this action.

NOW, THEREFORE, the parties agree to this settlement in the manner, terms and conditions as follows:

GENERAL TERMS

1. The parties to the Settlement Agreement are Plaintiffs and EPA. The parties understand that Stephen L. Johnson was sued in his official capacity as Administrator of the United States Environmental Protection Agency and this settlement applies to, is binding upon, and inures to the benefit of the parties, their officers, employees, successors and assigns.

2. For purposes of this Settlement Agreement, the following terms shall have the meanings provided below.

A. "Consent Decree" shall mean the document entered into by the parties on November 17, 2005 in the case of *Natural Resources Defense Council, et al. v. EPA*, Case No. _____;

B. "EPA" shall mean Stephen L. Johnson, the Administrator of EPA, or the Administrator's duly authorized representative, and the United States Environmental Protection Agency;

C. "Ground Water Rule" shall mean the rule described in 42 U.S.C. § 300g-1(b)(8);

D. "LT2" or "Long Term 2 Enhanced Surface Water Treatment Rule" shall mean "National Primary Drinking Water Regulations that require the use of treatment techniques, along with monitoring, reporting, and public notification requirements, for all public water systems (PWSs) that use surface water sources," as described in 68 Fed. Reg. 47369 (August 11, 2003);

E. "Plaintiffs" shall mean the Natural Resources Defense Council and the Bay

Area Physicians for Social Responsibility;

F. "Plaintiffs' Complaint" shall mean the Complaint filed in the *Natural Resources Defense Council, et al. v. EPA*, filed by Plaintiffs on November 17, 2005; and

G. "Settlement Agreement" shall mean this document.

TERMS OF AGREEMENT

3. Within twenty (20) days of the Effective Date of this Settlement Agreement as provided below in paragraph 7, Plaintiffs shall file with the Court in the case of *NRDC, et al. v. EPA*, a motion requesting that the Court enter an order holding litigation of counts 1 and 3 in that case in abeyance during the period required to effectuate the terms of this Agreement and resolve any requests for costs of litigation, including attorneys fees, pursuant to paragraph 16 of this Agreement.

4. The Plaintiffs shall have the right to request that the Court lift the stay of litigation referred to in paragraph 3 and set an expedited schedule for briefing and argument on the relevant claim or claims, if and only if any one of the following events occur:

a. If the EPA Administrator fails to sign for publication in the Federal Register, no later than December 15, 2005, a notice of final rulemaking promulgating the Long Term 2 Enhanced Surface Water Treatment Rule;

b. If EPA fails to deliver a Notice of Final Rulemaking promulgating the Long Term 2 Enhanced Surface Water Treatment Rule to the Federal Register for prompt publication no later than ten business days following signature of EPA's notice of final rulemaking of the Stage 2 Disinfectants and Disinfection Byproducts rule cited at 42 U.S.C. § 300g-1(b)(2)(C);

c. If the EPA Administrator fails to sign for publication in the Federal

Register, no later than August 11, 2006, a notice of final rulemaking promulgating the Ground Water Rule; this August 11, 2006 deadline shall not apply, however, if by July 11, 2006, EPA notifies Plaintiffs in writing that it is unable to meet the deadline, in which case the deadline shall be October 11, 2006;

d. If EPA fails to deliver a Notice of Final Rulemaking promulgating the Ground Water Rule to the Federal Register for prompt publication no later than ten business days following signature of the Ground Water Rule;

e. If EPA fails to make available to Plaintiffs, within five business following signature by the Administrator of the rules referred to in Paragraphs 4.a. and 4.c., copies of the notices of final rulemaking referred to in Paragraphs 4.b. and 4.d. of this Agreement

f. If EPA takes any step (other than necessary to correct any typographical or other errors in form) to delay or otherwise interfere with publication in the Federal Register of the notices of final rulemaking referred to in Paragraphs 4.b. and 4.d. of this Agreement.

5. If any of the events specified in paragraph 4.a. through e. occurs, EPA shall not object (and hereby authorizes Plaintiffs to represent to the Court that EPA does not object) to any request by the Plaintiffs to lift the stay of litigation pursuant to paragraph 4.

6. Within twenty (20) days after the later of (1) publication in the Federal Register of the Notice of Final Rulemaking promulgating the Final Long Term 2 Enhanced Surface Water Treatment Rule; or (2) publication in the Federal Register of the Notice of Final Rulemaking promulgating the Ground Water Rule, Plaintiffs shall file with the Court in the case of *NRDC, et al. v. EPA*, a motion pursuant to Fed. R. Civ. P. 41(a)(1), dismissing with prejudice the claims in Counts 1 and 3 of that case.

EFFECTIVE DATE

7. This Settlement Agreement shall become effective upon the entry of the Consent Decree by the Court in the case *NRDC, et al. v. EPA* (the "Effective Date").

STAY OF LITIGATION

8. EPA agrees that any motion to dismiss pursuant to paragraph 6 will be without prejudice to Plaintiffs' right to move for costs of litigation (including reasonable attorneys' fees), as further provided in paragraph 16.

9. Nothing in this Settlement Agreement shall be construed to confer upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Court of Appeals under section 1448(a) of the Safe Drinking Water Act, 42 U.S.C. § 300j-7(a), or (b) to waive any remedies that plaintiffs may have under section 1448(a), 42 U.S.C. § 300j-7(a). Nothing in this Settlement Agreement alters or affects the standards for judicial review of final EPA action.

10. Notwithstanding dismissal pursuant to paragraph 6, if (1) Plaintiffs seek judicial review in the court of appeals of any action taken by EPA pursuant to this Settlement Agreement, and (2) the court of appeals rules that such challenge is not within the jurisdiction of the court of appeals, any dismissal of the instant action shall not preclude Plaintiffs from bringing a district court action challenging any such action taken by EPA pursuant to this Consent Decree. Should any final action taken by EPA under paragraph 6 be vacated or remanded in whole or part by a United States court, any dismissal of the instant case shall not preclude Plaintiffs' right, which is expressly reserved, to argue in a new lawsuit that a claim exists for EPA to perform the actions sought by Counts 1 and 3 of Plaintiffs' Complaint herein, and that the court in which such a lawsuit is filed has jurisdiction over such a claim, nor shall any provision of this Agreement

preclude EPA's right, which is expressly reserved, to raise in any such new lawsuit all defenses, jurisdictional and otherwise, that it may have.

11. Nothing in this Settlement Agreement alters or affects the standards for judicial review of final EPA action.

DISPUTE RESOLUTION AND REMEDY FOR NON-COMPLIANCE

12. In the event of a disagreement between the Parties concerning the interpretation or performance of any aspect of this Settlement Agreement, the disputing Party shall provide written notice to the other party with written notice of the dispute and a request for negotiations. The Parties shall meet and confer in order to attempt to resolve the dispute. If the Parties are unable to resolve the dispute, then either Party may move the Court to resolve the dispute. The disputing Party shall notify the other party no later than 10 days prior to filing seeking such relief.

13. If EPA fails to timely fulfill any duty under this Agreement, Plaintiffs' sole judicial remedy shall be to ask the Court to lift the stay described in paragraph 3, and to set an expedited schedule for briefing and argument on the claim or claims. EPA shall not object (and hereby authorizes Plaintiffs to represent to the Court that EPA does not object) to any such motion filed by Plaintiffs. EPA does not waive or limit any defense relating to the claims.

14. The parties agree that contempt of court is not an available remedy under this Settlement Agreement.

AGENCY DISCRETION

15. Except as expressly provided herein, nothing in this Settlement Agreement shall be construed to limit or modify the discretion accorded to EPA by law. Nothing in this Settlement Agreement shall be construed to limit or modify EPA's discretion to alter, amend, or review from time to time any actions EPA may perform pursuant to this Settlement Agreement,

or to amend or promulgate regulations consistent with the Safe Drinking Water Act.

COSTS

16. The parties agree that Plaintiffs shall have 120 days after entry of the Consent Decree by the Court in the case of *NRDC, et al. v. EPA*, to file a motion for costs of litigation (including attorneys' fees) for activities performed with respect to Counts 1 and 3 of the case *NRDC, et al. v. EPA*. During this time the parties shall seek to resolve informally any claim for costs of litigation (including attorneys' fees) for activities performed with respect to Counts 1 and 3 of that case, and if they cannot, will submit that issue to the Court for resolution. The parties further agree that the Court shall retain jurisdiction to resolve any request for costs of litigation (including attorneys' fees), notwithstanding any dismissal pursuant to paragraph 6.

NOTICE

17. Any notice required or made with respect to this Settlement Agreement shall be in writing and shall be effective upon receipt. For any matter relating to this Settlement Agreement, the contact persons are:

For the Plaintiffs

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For the Defendants

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Office of General Counsel
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Mail Code 2355A
Washington, DC 20004

Upon written notice to the other Party, any Party may designate a successor contact person for any matter relating to this Settlement Agreement.

REPRESENTATIVE AUTHORITY

18. 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. By signature below, all Parties consent to this Settlement Agreement.

EFFECT OF SETTLEMENT AGREEMENT

19. The Settlement Agreement shall not constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of any party.

COMPLIANCE WITH OTHER LAWS

20. No provision of this Settlement Agreement shall be interpreted so as to 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 APA, 5 U.S.C. §§ 551-559, 701-706, the SDWA, or any other law or regulation, either substantive or procedural.

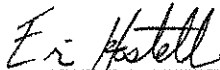
MODIFICATION

21. This Agreement may be modified or amended only by written agreement by counsel for the Parties.

FOR THE DEFENDANTS

Kelly A. Johnson
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Dated: Nov. 16, 2005

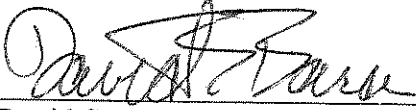
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Of Counsel for the United States
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FOR THE PLAINTIFFS

Dated: Nov. 17, 2005

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