

## SETTLEMENT AGREEMENT

1. This agreement is entered into between the AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, the NATURAL RESOURCES DEFENSE COUNCIL, the ENVIRONMENTAL DEFENSE FUND, the SIERRA CLUB, PUBLIC CITIZEN, INC., CAMPAIGN CALIFORNIA, CITIZENS FOR A BETTER ENVIRONMENT, SILICON VALLEY TOXICS COALITION, BERNARDO HUERTA, herein referred to as "Plaintiffs", and PETE WILSON, Governor of the State of California, and CAROL J. HENRY, Ph.D., Director of Environmental Health Hazard Assessment for the State of California, herein referred to as "Defendants".

2. Plaintiffs and Defendants are engaged in a legal action entitled American Federation of Labor and Congress of Industrial Organizations, et al., v. George Deukmejian, Governor of the State of California, et al. Defendants are successors in interest by law to former Governor George Deukmejian, former Secretary of Health and Welfare Clifford Allenby, and Health and Welfare Undersecretary Thomas E. Warriner, the original named defendants in this action.

3. Plaintiffs filed their complaint for declaratory and injunctive relief on May 31, 1988, in Superior Court of the State of California in and for the County of Sacramento (Case no. 502541). The complaint sought judicial invalidation of an emergency regulation adopted by Defendants on February 16, 1988 and subsequently adopted through formal rulemaking. This regulation is found at section 12713 of title 22 of the California Code of Regulations, and is herein referred to as the "regulation".

4. On April 16, 1990, the Sacramento Superior Court entered judgment, granting Plaintiffs' motion for summary judgment and declaring the regulation null and void. Defendants filed an appeal in the Court of Appeal for the Third Appellate District (3 CIVIL C 008697).

5. Plaintiffs contend that the regulation illegally adopts a categorical exemption from the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety Code section 25249.5, et seq.) (herein referred to as the "Act") for food, drug, cosmetic and medical device products.

Initials: 

**Settlement Agreement**

Page 2

6. Defendants contend that the regulation validly adopts standards drawn from other state and federal law to determine compliance with the Act. By executing this agreement, neither Plaintiffs nor Defendants concedes their position on the validity or invalidity of the regulation. Nothing in this agreement shall be construed as an admission by either party as to the validity of any contention made by the other.

7. Plaintiffs and Defendants resolve by this agreement all aspects of the litigation identified in paragraphs 2, 3, and 4 in the interest of avoiding the further expenditure of legal and technical resources.

8. Plaintiffs and Defendants agree that the judgment of the trial court dated April 16, 1990, shall have no res judicata or collateral estoppel effect in any enforcement action taken pursuant to the Act.

9. Defendants will create a "Priority List of Chemicals for Carcinogenic Dose-Response Assessment", herein the "Priority List", which will assign dose-response assessment priority for all chemicals listed pursuant to Health and Safety Code section 25249.8 as "known to the state to cause cancer" for which there is no level provided in section 12705 of title 22 of the California Code of Regulations. The initial Priority List shall assign high priority to the following substances:

Benz[a]anthracene  
Benzo[b]fluoranthene  
Benzo[j]fluoranthene  
Benzo[k]fluoranthene  
Benzotrichloride  
Dibenz[a,h]acridine  
Dibenz[a,j]acridine  
7H-Dibenzo[c,g]carbazole  
Dibenzo[a,e]pyrene  
Dibenzo[a,h]pyrene  
Dibenzo[a,i]pyrene  
Dibenzo[a,l]pyrene  
Diepoxybutane  
Diethyl sulfate  
3,3'-Dimethoxybenzidine (ortho-Dianisidine)  
3,3'-Dimethylbenzidine (ortho-Tolidine)  
Hexamethylphosphoramide

Initials: 

## Settlement Agreement

Page 3

Indeno [1,2,3-cd]pyrene  
Lead phosphate  
5-Methylchrysene  
Methyl iodide  
5-(Morpholinomethyl)-3-[(5-nitro-furfurylidene)-amino]-2-oxalolidinone  
Nickel carbonyl  
4-Nitrobiphenyl  
2-Nitropropane  
N-Nitrosomethylvinylamine  
N-Nitrososarcosine  
Polygeenan  
Saccharin, sodium

10. Defendants will further establish a process to update the priority list, based upon input from interested parties, on a quarterly basis concurrent with the issuance of each revision of the Governor's list of chemicals known to the state to cause cancer to reflect new chemical listings, completed dose-response assessments, and public input.

11. Defendants will schedule dose-response assessments in order to develop "no significant risk" levels for inclusion in section 12705 for approximately 30 substances assigned high priority on the priority list, with a target date of July 1, 1993 for development of the levels. These chemicals may include the substances identified in paragraph 9, or such other chemicals as Defendants deem necessary for the protection of the public health or for orderly implementation of the Act.

12. Defendants agree to repeal the regulation, effective July 1, 1993. Failure by Defendants to develop or adopt all of the "no significant risk" levels referred to in paragraph 11 shall not delay the repeal of the regulation.

13. Defendants agree that any provision which is adopted after the date of this agreement to define the term "no significant risk" of the Act for any food, drug, cosmetic or medical device product, and which employs standards derived from existing state or federal law shall be based upon specific numeric standards for the chemical, as evidenced by the rulemaking file. Such levels shall be consistent with and conform to sections 12703 and 12721 of title 22 of the California Code of Regulations.

Initials: 

Settlement Agreement

Page 4

14. Defendants agree to pay Plaintiffs' attorney fees in the amount of \$800,000. The fees shall be paid under Code of Civil Procedure section 1021.5 and only out of the state budget appropriations made expressly for that purpose (Item No. 9810-001-001). Plaintiffs agree that payment of the amount specified in this paragraph shall constitute a full and final satisfaction of all claims for attorney fees and costs arising out of the litigation which is identified in paragraphs 2, 3, and 4 of this settlement agreement. Plaintiffs agree to enter between themselves an agreement dividing the amount specified among themselves as they deem appropriate. A claim may then be submitted to the State Controller for payment of the fees. In making such claim, Plaintiffs agree to execute any such release or releases as may be required by the Office of the State Controller.

15. The terms of this settlement agreement may be enforced by any party through an appropriate judicial proceeding.

By: *[Signature]*  
 Attorney for Plaintiffs

Date: December 23, 1992

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, the ENVIRONMENTAL DEFENSE FUND, and BERNARDO HUERTA

By: *[Signature]*  
 Attorney for Plaintiffs

Date: December 23, 1992

NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB, PUBLIC CITIZEN, INC., CAMPAIGN CALIFORNIA, CITIZENS FOR A BETTER ENVIRONMENT, SILICON VALLEY TOXICS COALITION,

By: *[Signature]*  
 Attorney for Defendants

Date: December 23, 1992