

FILED

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MARIN COUNTY CLERK
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Attorneys for Plaintiff
AS YOU SOW

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF MARIN

AS YOU SOW, a non-profit
organization,

Plaintiff,

v.

DIAGRAPH CORPORATION, and
DOES 1 through 1000,

Defendants,

No. 163442

STIPULATION FOR
ENTRY OF JUDGMENT

IT IS HEREBY STIPULATED, by and between plaintiff As
You Sow and defendant Diagraph Corporation, through their
respective representatives, that judgment in the above-
entitled action be entered in accordance with the terms of the
settlement agreement between the parties, which is attached
hereto as Attachment A.

Dated: March 24, 1995

by:

Patrick Wilson
Patrick Wilson
Attorney for Plaintiff
AS YOU SOW

Dated: March 22, 1995

by:

James F. Mauze
James F. Mauze
Attorney For Defendant
Diagraph Corporation

SETTLEMENT AGREEMENT

On March __, 1995 in San Francisco, California, As You Sow ("AYS") of 408 13th Street, Suite 260, Oakland, CA 94612, and Diagraph Corporation ("Diagraph") of 3401 Rider Trail South, St. Louis, Earth City, MO 63045, agreed to the following terms and conditions:

WHEREAS:

AYS is a not-for-profit public interest foundation dedicated to promoting toxic awareness, protecting the environment and improving human health; and

Diagraph is a company that currently manufactures, distributes or sells inks and marking products which contain chemicals listed under Proposition 65, including, but not limited to, toluene, and which have trace amounts of benzene; and

On January 1, 1991, toluene was officially listed by the State of California as a chemical known to cause birth defects or other reproductive harm, pursuant to Health & Safety Code §25249.8; and

A list of the products which are covered by this Agreement is provided in Attachment A (the "Products"). The Products were manufactured, distributed or sold by Diagraph for sale or use in California, since January 1, 1992; and

On October 28, 1994, AYS served Diagraph with a document entitled, 60-Day Notice, which provided Diagraph with notice that it was allegedly in violation of Health & Safety Code §25249.6 for failing to warn individuals that certain products it manufactures, distributes or sells in California expose users to toluene, which is listed pursuant to Health & Safety Code §25249.8 as a reproductive toxin; and

On March 21, 1995, AYS served Diagraph with a complaint for injunctive relief and civil penalties, entitled As You Sow v. Diagraph Corporation (No. 163442, in Marin Superior Court) alleging violations of Proposition 65's warning requirements (Health & Safety Code §25249.6) for exposures to toluene (with trace amounts of benzene); and

In order to avoid costly and time-consuming litigation, AYS and Diagraph have agreed to settle all claims that have been brought or that could have been brought against Diagraph for exposures to Proposition 65 chemicals arising from Diagraph's manufacturing, distribution or sale of the Products containing the Proposition 65 chemicals.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. As of May 1, 1995, Diagraph agrees that it shall not ship (or cause to be shipped) for sale or use in the State of California, any products that contain chemicals listed under Proposition 65 unless they comply with Health & Safety Code §25249.6 and 22 California Code of Regulations §12601 for each such product by providing the appropriate warning detailed below in ¶1(a)-(c) of this Agreement. The warning shall be placed directly on the container of the products so that it is prominent and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual. The warnings shall bear one of the appropriate following statements:

(a) For products containing chemical(s) listed under Proposition 65 as reproductive toxin(s), but which contain no chemical(s) listed as carcinogen(s):

"WARNING: This product contains a chemical(s) known to the State of California to cause birth defects or other reproductive harm."

(b) For products containing chemical(s) listed under Proposition 65 as carcinogen(s), but which contain no chemical(s) listed as reproductive toxin(s):

"WARNING: This product contains a chemical(s) known to the State of California to cause cancer."

(c) For products containing chemical(s) listed under Proposition 65 as a reproductive toxin and a chemical(s) listed under Proposition 65 as a carcinogen:

"WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm."

2. Diagraph also agrees that as of May 1, 1995, it shall not ship (or cause to be shipped) for sale or use in the State of California, any products that contain chemicals listed under Proposition 65 unless Diagraph makes revisions to the products' Material Safety Data Sheets ("MSDS") to add appropriate Proposition 65 warnings. The MSDS warnings should be consistent with the label warnings outlined in ¶1 (a) through (c) above.

In addition, Diagraph will include information as to the presence of trace amounts of benzene, a substance listed as a known carcinogen under Proposition 65, in the Products' MSDS. This

information shall appear in either section 2, 5 or 8 of the MSDS. An examples of a compliant MSDS is attached hereto as Exhibit B.

3. Upon execution of this Settlement Agreement, Diagraph shall make a payment of \$3714.00 to AYS. \$364.00 of this payment will be used to cover filing fees for the above-referenced Complaint for Civil Penalties and Injunctive Relief, the Settlement Agreement, and the Stipulated Judgment referred to in ¶ 7 of this Agreement.

\$800.00 will be collected as penalties for violations of the clear and reasonable warning requirement of Health & Safety Code §25249.6, and will be apportioned with the State pursuant to statute. This payment is made pursuant to Health & Safety Code §25249.7.

\$2550.00 will be collected as restitution for violations of Business & Professions Code §17200 et seq., used by AYS to support research of, and investigation into, California citizens' exposure to chemicals listed under Proposition 65, and to defray AYS' investigation, costs and reasonable attorneys' fees incurred as a result of bringing this matter to Diagraph's attention and negotiating a settlement in the public interest. This payment is made pursuant to Business & Professions Code §17203.

4. AYS, by this Agreement, waives all rights to institute any action or claim known or unknown against Diagraph, its distributors, or arising against any third party which sells Diagraph's Products, whether under Proposition 65, Business & Profession Code §§17200 et seq., or any other statute or common law claim, based on Diagraph's failure to provide clear and reasonable warning to individuals about exposures to Proposition 65 chemicals including, but not limited to, toluene (and having trace amounts of benzene) from any of the Diagraph Products listed in Exhibit A that were shipped to California prior to May 1, 1995.

5. Diagraph, by this Agreement, waives all rights to institute any form of legal action against AYS, its members, officers, directors, attorneys representatives and other agents (the "AYS Releasees") based on any statute or provision of common law and for all actions or statements made by the AYS Releasees in the course of, and as a result of seeking enforcement of Proposition 65 and Business & Profession Code §§17200 et seq. against Diagraph.

6. The parties shall file a stipulated Judgment to be approved pursuant to CCP §664.6 with the Superior Court in accordance with the terms set forth in this Settlement Agreement.

7. In the event that a dispute arises with respect to any provision(s) of this Settlement Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

8. The terms of this Agreement shall be governed by the laws of the State of California.

9. All correspondence to AYS shall be mailed to:

Clifford Chanler, Esq.
Chanler & Associates
1700 Montgomery Street, Suite 110
San Francisco, CA 94111

All correspondence to Diagraph shall be mailed to:

James F. Mauze, Esq.
Ottsen, Mauze & Leggat
112 South Hanley Road
St. Louis, MO 63105

10. Nothing in this Settlement Agreement shall be construed as an admission by Diagraph of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Diagraph of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of Diagraph under this Settlement Agreement.

11. The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

AGREED TO:

By: 

As You Sow

By: Dan Jinko GP VP

Diagraph Corporation

Dated: 3/28/95

Dated: 3-22-95

Exhibit A

1. Diagraph Blockout Inks (all colors)
2. Diagraph Marking Inks (all colors)
3. Diagraph Stenciling Inks (all colors)
4. Diagraph Coding Inks (all colors)

MATERIAL SAFETY DATA SHEET

DIAGRAPH CORPORATION
P.O. BOX 520
HERRIN, ILLINOIS 62948

INFORMATION # 618-997-3321
CHEMICAL EMERGENCY # DURING TRANSPORTATION
1-800-535-5053 (INFOTRAC)

SECTION 1 PRODUCT IDENTIFICATION

ITEM # : 1513-155
PRODUCT NAME: STENCIL INK, BLACK
PRODUCT CLASS: QUIK SPRAY AEROSOL INK (MCL FREE)
DATE PREPARED: 3/21/95 SUPERSEDES: 7/30/93

HMIS RATING :
HEALTH 2 :
FLAMMABILITY 4 :
REACTIVITY 1 :

PREPARED BY: GLENDA ROTRAMEL
TITLE: ENVIRONMENTAL COORDINATOR

SECTION 2 HAZARDOUS INGREDIENTS

INGREDIENT	CAS#	ACGIH	OSHA	LD50 MG/KG	LC50 PPM	% BY WEIGHT
TOLUENE *	108-88-3	TLV	100 PPM	5000	5320	5-10
LACTOL SPIRITS	N/A	TLV	300 PPM			3
ACETONE	67-64-1	TLV	750 PPM	9750	64000	30-40
VM&P NAPHTHA	64742-89-8	TLV	300 PPM			4
MINERAL SPIRITS	64742-48-9	TLV	100 PPM			2
PROPANE/ISOBUTANE	68476-86-8	TLV	900 PPM	UNKN	UNKN	30-40

THIS MSDS WAS PREPARED USING THE GUIDELINES SET BY CFR 29 1910.1200 AND SARA TITLE III SECTION 313 TOXIC CHEMICAL LIST.

THIS PRODUCT CONTAINS ACETONE AND TOLUENE WHICH ARE SUBJECT TO THE REPORTING REQUIREMENTS OF SARA TITLE III SECTION 313 TOXIC CHEMICAL LIST.

* TOLUENE CONTAINS TRACE AMOUNTS OF BENZENE.

WARNING: THIS PRODUCT CONTAINS CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER AND BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM.

ALL COMPONENTS OF THIS PRODUCT ARE LISTED IN THE EPA'S INVENTORY OF CHEMICAL SUBSTANCES AS REQUIRED UNDER THE TOXIC SUBSTANCES CONTROL ACT (TSCA).

SECTION 3 PHYSICAL DATA

BOILING POINT : -43 F / -41 C	PERCENT VOLATILE : 82
VAPOR PRESSURE: 60 PSIG @ 70 F	VOC (GRAM/LITRE) : N/A
VAPOR DENSITY : HEAVIER THAN AIR	EVAPORATION RATE : FASTER THAN B-ACETATE
SPECIFIC GRAVITY : .82-.92	SOLUBILITY IN WATER : NEGLIGIBLE
ODOR: SWEET SOLVENT	APPEARANCE: COLORED PAINT

SECTION 4 FIRE AND EXPLOSION DATA

FLASH POINT : -156 F / -104 C
EXPLOSIVE LIMITS LOWER : 1.2 % UPPER : 12.8 %
EXTINGUISHING MEDIA : DRY CHEMICAL, CO 2, FOAM, HEAVY WATER FOG

HAZARDOUS DECOMPOSITION BYPRODUCTS : OXIDES OF CARBON AND NITROGEN

FIRE FIGHTING PROCEDURES : WATER FOG MAY BE USED TO HELP COOL THE CONTAINERS.

PRODUCT NAME: STENCIL INK, QUIK SPRAY BLACK

DATE OF PREP: 3/21/95

OVER HEATED CANS MAY EXPLODE, SPRAYING BURNING MATERIAL AND TRAVELING GREAT DISTANCES. VAPORS ARE HEAVIER THAN AIR AND WILL TRAVEL DISTANCES TO SOURCES OF IGNITION. HAZARDOUS VAPORS MAY BE PRESENT IN FIRES INVOLVING THIS MATERIAL. WEAR SELF-CONTAINED BREATHING APPARATUS. DIKE RUNOFF TO PREVENT IT FROM ENTERING GROUND WATER SYSTEMS. VENTILATE LOW LYING AREAS TO MINIMIZE VAPOR BUILDUP BEFORE ENTERING. ESFR SPRINKLER SYSTEMS HAVE BEEN SHOWN TO PROVIDE EXTRA PROTECTION IN AEROSOL STORAGE SYSTEMS.

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SECTION 5 HEALTH HAZARD DATA

PERMISSIBLE EXPOSURE LEVEL (TLV) : 100 PPM

SENSITIZATION TO PRODUCT: NO

TERATOGENY: NO

CARCINOGEN: NO

SYNERGISTIC PRODUCTS: NO

IRRITANCY: YES

MUTAGENY: NO

REPRODUCTIVE TOXICITY: NO

ACUTE EFFECTS

EYES: PAIN, IRRITATION, TRANSIENT CORNEAL DAMAGE.

SKIN: DEFATTING, IRRITATION, POSSIBLY DERMATITIS

BREATHING: HEADACHE, DIZZINESS, NAUSEA, LOSS OF CONSCIOUSNESS AND DEATH.

INGESTION: GASTROINTESTINAL IRRITATION, VOMITING.

CHRONIC: (LONG TERM)

TARGET ORGAN/SYSTEMATIC EFFECTS: LIVER, KIDNEYS, CENTRAL NERVOUS SYSTEM CAN CAUSE CARDIAC SENSITIZATION.

FIRST AID

EYES: FLUSH WITH WATER FOR AT LEAST 15 MINUTES AND SEEK MEDICAL ATTENTION.

SKIN: WASH WITH WATERLESS HANDCLEANER OR COLD CREAM THEN SOAP AND WATER. SEEK MEDICAL ATTENTION IF IRRITATION PERSISTS.

BREATHING: MOVE VICTIM TO FRESH AIR. GIVE RESUSCITATION IF NEEDED. KEEP SUBJECT QUIET UNTIL RECOVERED OR MEDICAL HELP ARRIVES.

INGESTION: DO NOT INDUCE VOMITING. SEEK MEDICAL HELP AS SOON AS POSSIBLE. ASPIRATION OF MATERIAL INTO THE LUNGS DUE TO VOMITING MAY LEAD TO PERMANENT LUNG DAMAGE, INCLUDING CHEMICAL PNEUMONITIS, WHICH CAN BE FATAL.

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SECTION 6 REACTIVITY DATA

CHEMICALLY STABLE?: YES

IF NO, DESCRIBE CONDITIONS TO AVOID? NONE

INCOMPATIBILITY WITH OTHER SUBSTANCES: YES

IF YES, WHICH ONES? WATER AND STRONG OXIDIZING AGENTS

REACTIVITY, AND UNDER WHICH CONDITIONS? AVOID OPEN FLAMES AND SPARKS.

HAZARDOUS DECOMPOSITION PRODUCTS: CO₂, CO, HYDROCARBONS

PRODUCT NAME: STENCIL INK, QUIK SPRAY BLACK

DATE OF FRBP: 3/21/95

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SECTION 7 SAFE HANDLING AND USE INFORMATION

PERSONAL PROTECTION: EYE: RECOMMENDED GLOVES: RECOMMENDED (NON ABSORB)
RESPIRATORY PROTECTION: RECOMMENDED USE A NIOSH/MSHA RESPIRATOR IN
CONFINED AREAS OR WHEN VAPORS EXCEED THE T.L.V.
CLOTHING: USE AS NEEDED FOOTWEAR: RECOMMENDED, OIL RESISTANT
VENTILATION: NEEDED TO KEEP VAPOR CONCENTRATION BELOW T.L.V. LEVEL.

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SECTION 8 PRECAUTIONS FOR STORAGE AND DISPOSAL

SMALL SPILLS: ABSORB WITH INERT MATERIAL. BE CAREFUL OF THE FLAMMABILITY
HAZARDS. ALWAYS USE PROTECTIVE APPAREL WHEN HANDLING SPILLS.

LARGE SPILLS: BE CAUTIOUS ABOUT THE FLAMMABILITY OF THE SPILL. DIKE TO
PREVENT THE MATERIAL FROM ENTERING THE GROUND WATER SYSTEM. SPILL ABSORBENT
MAY BE USED TO FACILITATE CLEAN-UP. TRANSFER THE MATERIAL TO A SUITABLE
CONTAINER DESIGNED FOR THIS PURPOSE. CONTACT ANY LOCAL, STATE, OR FEDERAL
AGENCY CONCERNED. DISPOSE IN ACCORDANCE WITH ALL APPLICABLE HAZARDOUS WASTE
REGULATIONS. RECOMMEND: "AEROSOLV" AEROSOL CAN RECYCLING UNIT.

STORAGE PRECAUTIONS: STORE BELOW 120° F. AVOID HEAT AND DIRECT SUNLIGHT.
CONSULT LOCAL FIRE MARSHALL AND INSURANCE REPRESENTATIVES FOR THEIR
REQUIREMENTS FOR AEROSOL STORAGE REQUIREMENTS. (NFPA 30B) PROVIDE ADEQUATE
VENTILATION TO KEEP VAPORS FROM BUILDING UP TO FLAMMABLE LIMITS. DO NOT USE
DEFORMED OR DAMAGED CANS. KEEP OUT OF THE REACH OF CHILDREN.

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SECTION 9 TRANSPORTATION AND REGULATORY INFORMATION

DOT PLACARD/LABEL: CONSUMER COMMODITY ORM-D
PROPELLANT: PROPANE/ISOBUTANE
SARA TITLE III REPORTABLE QUANTITY: 1000 LBS
NFPA 30B CLASSIFICATION: LEVEL 3 AEROSOL

OCEAN: AEROSOLS, CLASS 9, UN-1950, P.G. I, ERG #12
TRUCK: AEROSOLS, CLASS 2.1, UN-1950, P.G. I, ERG #12

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DISCLAIMER

THE FOREGOING INFORMATION HAS BEEN COMPILED FROM SOURCES BELIEVED TO BE
ACCURATE, BUT IS NOT WARRANTED TO BE. RECIPIENTS ARE ADVISED TO CONFIRM IN
ADVANCE OF THE NEED THAT THE DATA IS CORRECT, APPLICABLE AND SUITABLE TO THEIR
CIRCUMSTANCES. STANDARDS CHANGE WITHOUT NOTICE, IT IS THE RESPONSIBILITY OF
THE RECIPIENT TO ASSURE THAT THEIR PERSONNEL AND CUSTOMERS HAVE BEEN PROVIDED
WITH THIS INFORMATION AND DATA. THE DATA ON THIS MSDS IS NOT INTENDED TO BE
USED AS SPECIFICATIONS, ONLY AS A GUIDELINE TO INFORM THE PUBLIC AS TO THE
SAFE USE OF THIS PRODUCT. THE USER SHOULD REFER TO OSHA, STATE, AND LOCAL
SAFETY LAWS BEFORE USE.