

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered by and between Peter Englander (“Englander”) and Oatey Co. (“Oatey”), with Englander and Oatey each individually referred to as a “Party” and collectively as the “Parties.” Englander is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Oatey supplied the vinyl/PVC tubing at issue in this Settlement Agreement to Ace Hardware Corporation (“Ace Hardware”), the entities named in Englander’s August 17, 2017, 60-Day Notice of Violation.

1.2 General Allegations

Englander alleges that Ace Hardware sells vinyl/PVC tubing containing di(2-ethylhexyl) phthalate (“DEHP”), that is manufactured, sold, distributed for sale, or otherwise supplied to Ace Hardware by Oatey. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

1.3 Product Description

For purposes of this Settlement Agreement, “Products” are defined as vinyl/PVC tubing that contains DEHP and that is sold or distributed for sale in California by Oatey and those in its supply chain including, but not limited to, Ace Hardware. Such Products including, but are not limited to, the vinyl/PVC tubing component of the *ACE Hand Pump Kit Fluid Transfer, #4032363, UPC #0 82901 03506 0* identified in Englander’s Notice.

1.4 Notice of Violation

On August 17, 2017, Englander served Ace Hardware, the California Attorney General, and all other requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). The Notice alleges that Ace Hardware violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated

with exposures to DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations made in the Notice.

1.5 No Admission

Oatey denies the material, factual, and legal allegations contained in the Notice to its customer Ace Hardware, and maintains that all of the products that it has sold and distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Oatey of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Oatey of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Oatey. This Section shall not, however, diminish, or otherwise affect Oatey's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean December 1, 2017.

2. INJUNCTIVE RELIEF

2.1 Commitment to Reformulate or Warn

Commencing within 45 days of the Effective Date and continuing thereafter, Oatey agrees that all Products it sells or distributes for sale in California shall be either: (a) Reformulated Products, as defined by Section 2.2, below; or (b) Products bearing one of the clear and reasonable health hazard warnings set forth in Section 2.3.


2.2 Reformulated Products Defined


For purposes of this Settlement Agreement, Reformulated Products are defined as Products containing DEHP in a maximum concentration of 1,000 parts per million (0.1%) in any accessible component (i.e., any component that may be touched during a reasonably foreseeable use) when analyzed pursuant to U.S. Environmental Protection

Agency testing methodologies 3580A and 8270C or other methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, for all Products that do not qualify as Reformulated Products, Oatey agrees that it will only sell or distribute for sale in California Products with a clear and reasonable warning pursuant to this Section 2.3, or Article 6, Title 27 California Code of Regulations § 25601 et seq., as amended from time to time. Any warning provided for the Products shall be prominently placed with such conspicuousness when compared with other words, statements, designs, or devices, as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies. For purposes of this Settlement Agreement a warning affixed to the packaging, labeling, or directly on a Product containing one of the following statements shall be deemed clear:

 **WARNING:** This product can expose you to chemicals, including DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

 **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Oatey agrees to pay \$2,500 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty retained by Englander. Oatey shall

issue its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,875; and (b) “Peter Englander, Client Trust Account” in the amount of \$625, or by wire transfer pursuant to Section 3.3, below. Englander’s counsel shall be responsible for delivering OEHHA’s portion of the civil penalty payment.

3.2 Attorneys’ Fees and Costs

The Parties acknowledge that Englander and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed, leaving the issue to be resolved after the material terms of the Parties’ agreement had been settled. Shortly after finalizing the other settlement terms the Parties negotiated Oatey’s reimbursement of Englander’s fees and costs under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Oatey agrees to pay \$19,000 in a single check made payable to “The Chanler Group.” Oatey’s payment under this Section shall cover all amounts incurred investigating, bringing this matter to the attention of Oatey and Ace Hardware, and negotiating a settlement that provides a significant public benefit.

3.3 Payment Terms

The Parties agree and understand that Oatey’s settlement payments pursuant to Sections 3.1 and 3.2 may be made via wire transfer. All payments due under this Settlement Agreement shall be due within ten (10) days of the Effective Date, or the date upon which Englander’s counsel provides Oatey with wire transfer instructions, whichever is later. If paid by check, all payments shall be delivered to:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Englander’s Release of Oatey

This Settlement Agreement is a full, final, and binding resolution between Englander, in his individual capacity and not on behalf of the public in California, and Oatey of any violation of Proposition 65 that was or could have been asserted by Englander on his own behalf, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Oatey or its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Oatey directly or indirectly distributes or sells the Products, including its downstream distributors, wholesalers, customers (including, without limitation, Ace Hardware), retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on the alleged or actual failure to warn about exposures to DEHP in Products sold or distributed for sale by Oatey before the Effective Date, as alleged in the Notice. Englander agrees that compliance with this Settlement Agreement constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP in Products sold after the Effective Date.

In further consideration of the promises and agreements herein contained, Englander, as an individual and not on behalf of the public of California, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all rights he may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including, without limitation, all actions and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys’ fees, arising under Proposition 65 with respect to DEHP in Products sold or distributed for sale by Oatey before the Effective Date, as alleged in the Notice.

4.2 Oatey’s Release of Englander

Oatey, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives all claims against Englander and his attorneys and other representatives, for any actions taken or statements made, whether while investigating claims, seeking to enforce Proposition 65 against it and Ace Hardware in this matter, or with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. If Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Oatey may provide written notice to Englander of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Oatey:

Oatey Co.
Attn: Legal Department
20600 Emerald Parkway
Cleveland, OH 44135

For Englander:

The Chanler Group
Attn: Proposition 65 Coordinator
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Englander and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

10. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all the terms and conditions of this Settlement Agreement.

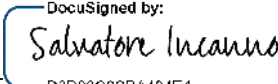
AGREED TO:

Date: 12/1/2017

By: 
PETER ENGLANDER

AGREED TO:

Date: 11/30/2017

By: 
Salvatore Incanno, VP & CFO
OATEY CO.