

## SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by and between the City of San Bernardino, California, United Water Florida, and the City of Washington, Georgia, and the U.S. Environmental Protection Agency.

WHEREAS, on October 26, 1995, the U.S. Environmental Protection Agency ("EPA") promulgated a final rule under the Clean Water Act ("CWA") that, inter alia, adds whole effluent toxicity testing methods to the list of nationally-applicable methods in 40 C.F.R. Part 136 (60 Fed. Reg. 53,529) ("Final Rule");

WHEREAS, Petitioners City of San Bernardino, California (No. 96-1116), United Water Florida (No. 96-1215), and City of Washington, Georgia (No. 96-1217) (collectively "Petitioners") filed petitions for review of the Final Rule in the U.S. Court of Appeals for the District of Columbia;

WHEREAS, the parties wish to settle this matter without further litigation;

WHEREAS, settlement of all issues is in the public interest;

NOW, THEREFORE, without admission of any issues of fact or law, or waiver of any claim or defense, either factual or legal, the parties agree as follows:

### SPECIFIC PROVISIONS

1. On the date that the parties enter into this Settlement Agreement, EPA will sign a document entitled "Clarifications Regarding Whole Effluent Toxicity Test Methods

Recently Published at 40 CFR Part 136 and Guidance on Implementation of Whole Effluent Toxicity in Permits," a copy of which is attached to this Agreement. After signature, EPA will promptly distribute the document to the named recipients.

2. On or before July 2, 1998, EPA will prepare and issue a technical guidance document that addresses the issue of when and under what circumstances a permittee should conduct toxicity identification evaluation (TIE) and/or toxicity reduction evaluation (TRE) activities. The guidance will only address technical issues and will not affect current policy or legal authority. The technical guidance document will address: technical limitations on the TIE process; consideration of persistence and magnitude of toxicity events; ionic imbalances of effluents; the applicability of schedules of compliance; and inconclusive TIEs/TREs. Where appropriate, the guidance document will distinguish between acute and chronic toxicity limitations and evaluation procedures. This guidance document would supplement the EPA guidance entitled, Technical Support Document for Water Quality-Based Toxics Control, EPA/505/2-90-001 (March 1991). The parties may extend the date for issuance of this guidance document by mutual consent.

3. Promptly after EPA signs and distributes the attached document pursuant to Paragraph 1 above, Petitioners and EPA shall jointly file a motion for voluntary dismissal with prejudice of the petitions for review in No. 96-1116, No. 96-1215, and No. 96-1217, pursuant to Fed. R. App. P. 42(b).

#### GENERAL PROVISIONS

4. Nothing in the terms of this Settlement Agreement shall be construed to limit or modify the discretion accorded EPA by the CWA or by general principles of administrative law.

5. Nothing in this Settlement Agreement shall be construed to limit or modify EPA's discretion to subsequently alter, amend, or revise the document identified in Paragraph 1 (and attached to the Agreement) or the technical guidance document described in Paragraph 2, or to promulgate superseding guidance, rules, or regulations.

6. This is the entire Settlement Agreement between the parties with respect to the issues raised by City of San Bernardino, California v. EPA, No. 96-1116 (D.C. Cir.), United Water Florida v. EPA, No. 96-1215 (D.C. Cir.), and City of Washington, Georgia v. EPA, No. 96-1217 (D.C. Cir.). All prior conversations, meetings, discussions, drafts and writings of any kind are specifically superseded by this Settlement Agreement and may not be used by the parties to vary or contest the terms of this agreement, or as evidence of the parties' intent in entering into this Settlement Agreement.

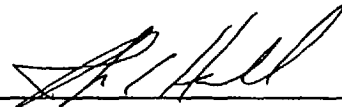
7. The parties may agree in writing to modify any provision of this Settlement Agreement.

8. This Settlement Agreement is being entered into so as to avoid further litigation. Nothing in this settlement agreement shall be construed to constitute an admission of any issue of fact, law or liability by any of the parties.

9. Each party shall bear its own costs, including attorneys' fees, in this litigation, including attorneys' fees and costs associated with monitoring, overseeing, or implementing this Settlement Agreement.

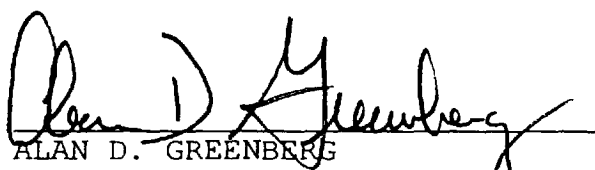
10. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to bind the respective parties to the terms of this Agreement. This Agreement will be deemed to be executed and shall become effective when it has been signed by the representatives of the parties set forth below.

Dated: July 21, 1997

  
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Dated: July 16, 1997

  
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