

SETTLEMENT AGREEMENT

This Settlement Agreement (or “Agreement”) is entered into by and between the Ecology Center, Center for Environmental Health, United Parents Against Lead & Other Environmental Hazards, and Sierra Club (together, “Petitioners”) and the United States Environmental Protection Agency (“EPA”) and Michael Regan in his official capacity as Administrator of the EPA (together, “Respondents”) (Petitioners and Respondents collectively, “the Parties”).

WHEREAS, on August 26, 2009, EPA granted a petition submitted by Petitioners and other allied organizations and individuals pursuant to section 21 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2620, requesting that EPA establish regulations prohibiting the manufacture, processing, and distribution in commerce of lead wheel balancing weights, and EPA committed to promptly commencing an appropriate proceeding under TSCA;

WHEREAS, EPA has not issued the advance notice of proposed rulemaking or proposed rule that it anticipated issuing in its 2009 petition grant, nor has it taken final agency action subject to judicial review concerning lead wheel weights;

WHEREAS, on August 22, 2023, Petitioners filed a petition for writ of mandamus in the United States Court of Appeals for the Ninth Circuit, case number 23-70158, arguing that EPA’s delay in acting pursuant to its 2009 petition grant was unreasonable and a violation of the Administrative Procedure Act and requesting the Court compel EPA to proceed with and conclude the rulemaking process within six months of the Court’s order;

WHEREAS, on September 27, 2023, a panel of the United States Court of Appeals for the Ninth Circuit issued an order explaining that the petition for writ of mandamus raises issues that require an answer and directing Respondents to file an answer to the petition within twenty-one days;

WHEREAS, the Parties, seeking prompt resolution of this matter, subsequently entered the Ninth Circuit Mediation Program and have negotiated a settlement that they consider to be a just, fair, adequate, and equitable resolution of the dispute at issue in this litigation;

NOW THEREFORE, Petitioners and Respondents, intending to be bound by this Agreement, agree as follows:

1. EPA will publish an advance notice of proposed rulemaking concerning lead wheel weights.
2. EPA will either:
 - a. by December 31, 2024, sign a proposed rule regulating lead wheel weights pursuant to 15 U.S.C. § 2605(a), and within seven (7) days of signature request publication of the proposed rule by the Office of the Federal Register, and sign a final rule or otherwise take final action on the proposed rule by September 30, 2025, and request publication of the final action by the Office of the Federal Register within seven (7) days of signature; or
 - b. by December 31, 2024, sign a determination not to proceed with a rulemaking regulating lead wheel weights, and within seven (7) days of signature request publication of the decision by the Office of the Federal Register.
3. Within ten (10) business days of the date this Agreement is fully executed and counsel for Petitioners and Respondents identified in paragraph 13 below are in receipt of a fully executed copy, which may be sent via electronic mail, the Parties will file with the Circuit Mediator a joint motion to voluntarily dismiss the petition for writ of mandamus without prejudice to reinstatement within twenty-eight (28) days from:

- a. January 7, 2025, if EPA failed to either (1) sign a proposed rule and request publication by the Office of the Federal Register, or (2) request publication in the Federal Register of a determination not to proceed with regulating lead wheel weights;
- b. October 7, 2025, if EPA signed a proposed rule but has failed to sign a final rule or otherwise take final action on the proposed rule and request publication of such final action by the Office of the Federal Register; or
- c. the occurrence of the condition for reinstatement provided in paragraph 8.

4. Within ten (10) business days of: (a) the publication in the Federal Register of EPA's final action following the proposed rule regulating lead wheel weights; or (b) the publication in the Federal Register of EPA's decision not to proceed with a rulemaking on lead wheel weights, the Parties will inform the Circuit Mediator that such dismissal provided for in paragraph 3 may be converted to a dismissal with prejudice.

5. Except as expressly provided in this Agreement, none of the Parties waive or relinquish any legal rights, claims, or defenses it may have. Entering into this Agreement does not constitute an admission by EPA that it would be appropriate for the Court to issue a writ of mandamus.

6. Nothing in this Agreement should be construed to limit or modify the discretion accorded EPA by TSCA or the general principles of administrative law. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

7. Nothing in this Agreement limits or otherwise affects Petitioners' rights to challenge any final agency actions reached by EPA in connection with this matter, including but not limited to the agency actions contemplated in paragraph 2 above.

8. In the event a dispute under this Agreement arises, or any of the Parties believe that a breach of this Agreement has occurred, the Parties shall within fourteen (14) calendar days of receiving written notification, via electronic mail from another Party or its counsel, of a request for a meeting make best efforts to meet and confer in good faith to resolve any disputes. If the Parties are unable to resolve the dispute within twenty-eight (28) days of the initial meet and confer, Petitioners may move to reinstate the case and resume litigation of its claims in case number 23-70158. Contempt shall not be an available remedy if EPA fails to meet any of the deadlines set forth in paragraph 2.

9. In the event of a lapse of government appropriations within 120 days prior to any of the deadlines in paragraph 2, those deadlines shall be extended automatically by one day for each day of lapsed appropriations. If EPA determines that additional time is needed due to a lapse in appropriations, nothing in this paragraph shall preclude EPA from seeking an additional extension.

10. Nothing in this Agreement limits or otherwise affects Petitioners' rights to address or take any position that they deem necessary or appropriate in any formal or informal proceeding before any administrative or legislative body.

11. This Agreement shall terminate when the petition for writ of mandamus is dismissed with prejudice pursuant to paragraph 4 above. If that event does not occur, then the Parties' obligations under this Agreement terminate when the case has been reinstated to the active docket.

12. The Parties stipulate that the Parties may extend or modify the deadlines set forth in paragraph 2 above by written stipulation executed by counsel for both Parties. This Agreement may be modified only upon mutual written consent of the Parties.

13. Any notice required or made with respect to this Agreement shall be in writing and shall be effective on the date that notice is delivered by electronic mail. For any matter relating to this Agreement, the contact persons are:

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

14. This Agreement shall be subject to a thirty-day comment period in the Federal Register prior to signing.

15. This Agreement shall take effect when it has been signed by the representatives of the Parties.

16. The parties are negotiating a resolution of Petitioners' request for attorneys' fees separate from this Agreement. Nothing in this Agreement shall be interpreted to prevent such resolution or recovery of attorneys' fees. EPA reserves its defenses to such a claim.

DATED: _____

TODD KIM
Assistant Attorney General

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