

AGREEMENT

WHEREAS, plaintiffs Frank Gearhart, Citizens Interested in Bull Run, Inc., Kathy Williams, and Frances Price Cook (collectively, "plaintiffs"), filed an action in the U.S. District Court for the District of Oregon against the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Agency") seeking an order to compel the Administrator to promulgate regulations pursuant to section 405(d)(2)(A)(ii) and (B)(ii) of the Clean Water Act (CWA), 33 U.S.C. §1345(d)(2)(A)(ii) and (B)(ii);

WHEREAS, the Natural Resources Defense Council ("NRDC") and the Association of Metropolitan Sewerage Agencies ("AMSA") subsequently intervened in the action as Plaintiff-Intervenors (collectively, "intervenors");

WHEREAS, the Court entered a Consent Decree on September 5, 1990, which was subsequently modified by the Court;

WHEREAS, in accordance with the Consent Decree, EPA signed a Notice of Proposed Rulemaking entitled "Standards for the Use or Disposal of Sewage Sludge" which was published on December 23, 1999 at 64 Fed. Reg. 72045 (hereinafter "Round Two NPRM");

WHEREAS, in the Round Two NPRM EPA proposed, *inter alia*, to amend the Standards for the Use or Disposal of Sewage Sludge in 40 C.F.R part 503 to include standards for dioxin and dioxin-like compounds in sewage sludge to be applied to the land;

WHEREAS, pursuant to paragraph 4 of the Consent Decree, the Parties have stipulated to and requested Court approval of an extension of the deadline for taking final action on the proposed Round Two land application rule to October 17, 2003 ("stipulated modification of the Consent Decree");

WHEREAS, EPA intends to publish a Notice of Data Availability (“NODA”) in the Federal Register related to the Round Two NPRM for land application of sewage sludge prior to taking final action on the proposed land application rule.

NOW THEREFORE, EPA, plaintiffs and intervenors hereby enter into this Agreement and agree to the following additional actions which are related to the actions undertaken pursuant to the Consent Decree:

Definition of Terms

1. As used in this Agreement, the following terms shall have the following meanings:

(a) “Notice of Data Availability” or “NODA” means a notice for publication in the Federal Register providing notice and opportunity to comment on information not previously made available to the public for comment.

(b) “Dioxin Reassessment Report” means the final version of the EPA document currently entitled *Exposure and Human Health Reassessment of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds*.

(c) “Dioxin reassessment process” includes the broad range of scientific research, peer review, public review, inter-agency review, EPA Science Advisory Board review, and other EPA review and input reflected in EPA’s most current publicly available documents on exposure to, and human health effects of, 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and related compounds.

(d) “Dioxins” means the 29 dibenzo-p dioxin, polychlorinated dibenzofuran and coplanar polychlorinated biphenyl congeners identified in the proposed definition of dioxins in 64 Fed. Reg. 72045 (December 23, 1999).

(e) “Revised risk assessment” means the document entitled *Exposure Analysis for Dioxins, Dibenzofurans, and CoPlanar Polychlorinated Biphenyls in Sewage Sludge Peer Review Draft*, dated November 30, 2001, including the Risk Characterization document, or the latest publicly available draft version of these documents as of the date of signature on the NODA.

Notice of Data Availability

2. EPA will sign a NODA to be published in the Federal Register relating to the Round Two NPRM for land application of sewage sludge. The NODA will provide at least 90 days for public comment.

3. The NODA will announce the availability of, discuss, and seek public comment on the information and subject matter described in subparagraphs (a) through (f) of this paragraph, which EPA may take into consideration in taking final action on the Round Two land application rule. At a minimum, the NODA will address the following in a manner consistent with Agency policy in effect at the time the NODA is signed:

(a) The revised risk assessment, which models specific information and assumptions of the risk to human health from dioxins in land-applied sewage sludge. The discussion of the revised risk assessment in the NODA will describe the assumptions and information used in the revised risk assessment and risk characterization documents, including, at a minimum:

(i) assumptions concerning application of sewage sludge to the land, the information on which those assumptions are based, and a discussion of land application practices in the United States;

(ii) the risk to the “highly exposed individual” modeled in the revised risk assessment based on summing the exposure to dioxins in land-applied sewage sludge from the relevant multiple pathways modeled in the risk assessment; and

(iii) a description of the exposure scenario for the land application of sewage sludge and the population modeled, and key assumptions and data used to model the population exposure scenario, including information concerning the U.S. population of “highly exposed individuals” as that term is defined in the risk assessment.

(b) Implications for the Round Two land application rulemaking of the latest publicly available information on dioxin, including information available from EPA’s dioxin reassessment process, with respect to:

(i) use of a dioxin-specific cancer slope (potency) factor for assessing cancer risk to human health from dioxins being developed in the dioxin reassessment process;

(ii) the “margin of exposure” and/or any other approach to evaluating non-cancer adverse health effects from exposure to dioxin being developed in the dioxin reassessment process;

(iii) consideration of background levels of dioxin in evaluating risks to human health from land application of sewage sludge.

(c) Publicly available data, scientific studies, and other relevant information that EPA will collect and evaluate with respect to reasonably anticipated adverse effects on ecological species from exposure to dioxins in sewage sludge that is applied to the land, using as a starting point, EPA’s 1999 Screening Ecological Assessment of Chlorinated Aliphatics Waste Management Scenarios. In the NODA, EPA will discuss and solicit public comment on the

information collected and evaluated, and will discuss and solicit public comment on any reasonable and scientifically defensible regulatory options that EPA identifies for protecting the environment from any such reasonably anticipated adverse effects.

(d) Sewage sludge data obtained from EPA's national sewage sludge survey for dioxins conducted in 2001 ("EPA 2001 survey"), data from the AMSA 2000/2001 Survey of Dioxin-like Compounds in Biosolids ("AMSA survey"), as well as reports analyzing the sewage sludge data obtained from the EPA 2001 survey and the AMSA survey. The data and analysis will include at least the following:

(i) a breakdown of dioxin content of each sample in the EPA survey by congener and by the toxic equivalency factor (TEF) for each congener, including whether each congener was detected in the sample;

(ii) an explanation of how EPA compared the dioxin levels in the 1988 National Sewage Sludge Survey samples and dioxin levels in the EPA 2001 survey samples, addressing revisions of the World Health Organization (WHO) TEF values, improved analytic procedures resulting in lower detection limits, and direct measurement of co-planar polychlorinated biphenyls in the EPA 2001 survey data;

(e) An analysis of variability in levels of dioxins in sewage sludge based on available data from several wastewater treatment facilities, and a discussion of possible reasons for increases or decreases in, or the high level of, dioxins in certain current sampling results. EPA also will solicit comment on the effect of the variability analysis on the proposed land application rule, including the adequacy of proposed monitoring requirements.

(f) Discussion of the risk from land application of sewage sludge from small entities based on the EPA 2001 survey data from small facilities and information from the revised risk assessment. EPA will solicit comment on the effect of this information on the proposed exclusion of small entities from the proposed land application rule.

(g) Plaintiffs and plaintiff-intervenors do not concede the appropriateness of the use of data, analysis or other information described in subparagraphs (a) - (f) above in the final Round Two land application rulemaking.

Dioxin Reassessment Report

4. In the event that EPA issues a final Dioxin Reassessment Report before October 17, 2003, EPA will apply the pertinent findings and policies contained in the final Dioxin Reassessment Report and any applicable Agency policy adopted as a result of the final Dioxin Report to its final action on the Round Two land application rule.

Accountability

5. EPA will notify the parties when significant documents, such as background materials, are made publicly available by placement in the rulemaking docket. EPA will also make available to the parties other documents prepared by EPA's Office of Science and Technology in the Office of Water, that would be available under the Freedom of Information Act and that directly relate to the Round Two land application rulemaking.

6. EPA will make responsible senior officials, including the Director of the Office of Science and Technology in the Office of Water, available three times each year to meet with the parties and their representatives concerning the Agency's progress towards taking final action on Round Two regulations for land application of sewage sludge.

Other Sewage Sludge Related Activities

7. EPA is sponsoring a study by the National Research Council (NRC) of the National Academy of Sciences to review Risks from Toxicants and Pathogens in Biosolids Applied to Land. The approximate start time for the study was January 1, 2001, and the project duration is projected to be 18 months. EPA expects NRC to issue a final report at the end of the project. Initiation of the NRC study is an important step for EPA in prioritizing future agency action with respect to sewage sludge, and results of the study will be considered in planning the Agency's next steps with respect to sewage sludge management. After NRC issues its final report, EPA commits to do the following:

(a) If the NRC issues its final report on or before June 28, 2002, then by April 1, 2003, EPA will sign a notice for publication in the Federal Register that explains how EPA plans to respond to all recommendations in the final NRC report, explains the rationale for the planned response, and solicits public comment on these matters. If NRC issues its final report after June 28, 2002, EPA will sign such a notice no later than nine months after the date of the final NRC report.

(b) In the notice addressing the NRC recommendations, EPA will specify and solicit public comment on:

(i) whether EPA is planning any regulatory or non-regulatory means of addressing the NRC recommendations, and

(ii) the time frame for taking final action on any planned activities, including a time frame for proposing rules, if any.

(c) EPA will sign a notice for publication in the Federal Register of its final plan for taking action in response to the NRC recommendations within nine months of the date of publication of the notice addressing the NRC recommendations.

(d) EPA will make best efforts to carry out its plan for taking action in response to the NRC recommendations within the time frames stated in the Federal Register notice.

(e) EPA and AMSA do not concede that the review and notice procedures agreed to in this paragraph are required by section 405 or any other provision of the Clean Water Act, 33 U.S.C. § 1251 et seq.

8. On or before April 1, 2003 or nine months after the NRC report is issued, whichever is later, but in no event later than July 1, 2003, EPA will review regulations promulgated under section 405(d) of the Clean Water Act (CWA), 33 U.S.C. §1345(d), for the purpose of identifying additional toxic pollutants, if any, that may warrant regulation, pursuant to section 405(d)(2)(C), 33 U.S.C. §1345(d)(2)(C), and will sign a notice for publication in the Federal Register providing the results, of and seeking public comment on, its review. EPA will allow the public at least 60 days on which to comment on the notice. EPA and AMSA do not concede that the review and notice procedures agreed to in this paragraph are required by section 405(d)(2)(C), 33 U.S.C. §1345(d)(2)(C).

(a) In conducting its review, EPA will undertake an evaluation of publicly available information, such as sampling data, scientific studies, and other analysis and information from national and international government entities, universities, nonprofit organizations, and private entities concerning, at a minimum, the toxicity, persistence, concentration, mobility, and potential for exposure of additional toxic pollutants in sewage sludge.

(b) In the Federal Register notice, EPA will state whether, as a result of its review, it has identified additional toxic pollutants that may be present in sewage sludge in concentrations which may adversely affect public health or the environment.

(c) Six months after the close of the comment period, EPA will sign a notice for publication in the Federal Register stating the final results of its review and whether it has identified any additional toxic pollutants in sewage sludge that warrant regulation, pursuant to section 405(d)(2)(C), 33 U.S.C. §1345(d)(2)(C). The notice will include time frames for proposing and finalizing additional rules, if any.

(d) In return for the commitments contained in this paragraph 8, plaintiffs and intervenors release, discharge, and covenant not to assert (by way of commencement of an action, or the joinder of EPA in an existing action, or in any other fashion) any and all claims, causes of action, suits or demands of any kind in law or in equity alleging that EPA has failed to comply with, or has unreasonably delayed taking actions addressed in, CWA section 405(d)(2)(C), 33 U.S.C. §1345(d)(2)(C); provided, however, that AMSA is not precluded from intervening on behalf of EPA in an action asserting such claim or claims brought by a non-party to this Agreement. In the event that AMSA intervenes in such an action, AMSA shall not pursue any relief more stringent than that provided in this paragraph 8. This release, discharge and covenant will expire on April 1, 2003 or nine months after the NRC report is issued, whichever is later, but in no event later than July 1, 2003; provided however, if EPA determines that it cannot take any of the actions described in this paragraph 8, EPA agrees to notify the plaintiffs and intervenors in writing within 30 days of making that determination. In that event, this release, discharge and covenant will terminate on the date that EPA provides such written notification. EPA does not

waive or limit, and expressly reserves, any and all defenses to such claims filed after the termination of this release, discharge and covenant.

(e) EPA may, in its discretion, combine the notices discussed in this paragraph with the Federal Register notices described in subparagraphs 7(a) and (c) of this Agreement.

Remedy

9. If EPA determines that it cannot take any of the actions specified in paragraphs 2 through 7 of this Agreement, EPA agrees to notify plaintiffs and intervenors within 30 days of making that determination. Plaintiffs' and intervenors' sole remedies shall be limited to seeking enforcement or modification of the terms of the consent decree or the filing of a new action. EPA does not waive or limit any defense relating to such litigation. This Agreement shall not constitute an admission of any fact, wrongdoing, misconduct or liability on the part of EPA, its officers, or any person affiliated with it. The parties agree that contempt of court is not an available remedy under this Agreement.

Compliance With Other Laws

10. The commitments EPA has made under this Agreement are subject to the availability of appropriated funds. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 5 U.S.C. § 1341, or any other applicable law or regulation. In the event that sufficient appropriated funding is not available, the parties shall make reasonable efforts to attempt to adjust the commitments in the Agreement. Plaintiffs and intervenors reserve their rights to challenge EPA's construction of the Anti-Deficiency Act or any other law or regulation

that EPA determines is preventing EPA from obligating or paying funds sufficient to meet its commitments under this Agreement.

Agency Discretion

11. Except as expressly provided herein, nothing in this Agreement shall be construed to limit or modify the discretion accorded EPA by the Clean Water Act or general principles of administrative law. Nothing in this Agreement shall be construed to limit or modify EPA's discretion to alter, amend, or revise from time to time any actions taken by EPA in fulfillment of the terms of this Agreement.

Dates for Agreement

12. The date of this Agreement shall be the latest date on which any signatory signs the Agreement. This Agreement shall become effective upon the entry by the Court of the stipulated modification of the Consent Decree. If for any reason the Court does not enter the stipulated modification of the Consent Decree, this Agreement is null and void.

Applicable Law

13. This Agreement shall be governed and construed under the laws of the United States.

Third-Party Beneficiaries.

14. Nothing in this Settlement Agreement shall be construed to make any person or entity not executing this Agreement a third-party beneficiary to this Agreement.

Modifications.

15. The Parties may agree, in a written document signed by all of the Parties, to modify this Agreement.

WHEREFORE, after having reviewed the terms and conditions of this Agreement, Plaintiffs, AMSA, NRDC and EPA, by their duly authorized representatives, hereby consent and agree to the terms and conditions of this Agreement.

AGREED:

ATTORNEY FOR PLAINTIFFS:

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DATE: _____

AGREED:

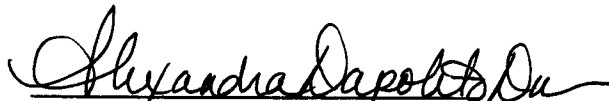
ATTORNEY FOR PLAINTIFF-INTERVENOR
NATURAL RESOURCES DEFENSE COUNCIL:

NANCY STONER
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DATE: _____

AGREED:

ATTORNEY FOR PLAINTIFF-INTERVENOR
ASSOCIATION OF METROPOLITAN SEWERAGE AGENCIES :



DATE: March 29, 2002

ALEXANDRA DAPOLITO DUNN

General Counsel

Association of Metropolitan Sewerage Agencies

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AGREED:

ATTORNEY FOR DEFENDANT:

THOMAS L. SANSONETTI
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Environment and Natural Resources Division

DATE: _____

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