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LOS ANGELES  
SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

AMERICAN ENVIRONMENTAL SAFETY  
INSTITUTE, a non-profit California  
corporation,

Plaintiff,

v.

THE PROCTER & GAMBLE DISTRIBUTING  
COMPANY, a Ohio corporation; THE  
PROCTER & GAMBLE MANUFACTURING  
COMPANY, a Ohio corporation; and DOES 1 -  
100,

Defendants.

Case No. BC334309

[Hon. Mary Thornton House]

**REVISED ~~PROPOSED~~ CONSENT  
JUDGMENT ONLY AS TO  
DEFENDANTS THE PROCTER &  
GAMBLE DISTRIBUTING COMPANY  
AND THE PROCTER & GAMBLE  
MANUFACTURING COMPANY**

Complaint Filed: June 1, 2005

Dept. 17, Room 313

This Consent Judgment is entered into by and between the American Environmental Safety Institute (“AESI”) and The Procter & Gamble Distributing Company and The Procter & Gamble Manufacturing Company (collectively “Procter & Gamble”).

1. **Definitions.** As used in this Consent Judgment, the following definitions shall apply:

1.1 **“Toothpaste Products”** includes all of Procter & Gamble’s toothpaste products sold in the United States identified in Exhibit A to this Agreement.

1.2 **“Lead”** means the chemical element lead (Pb) and lead compounds as defined in section 12000 of Title 22 of the California Code of Regulations.

1           1.3    “**Hydrated Silica**” is the naturally-occurring mined material used as a gentle  
2 abrasive in the Toothpaste Products.

3           1.4    “**ppm**” means parts per million.

4           1.5    “**Parties**” refers to AESI and Procter & Gamble collectively.

5    2.    **Background.**

6           2.1    AESI is a non-profit California corporation dedicated to investigating  
7 environmental and public health hazards affecting children and adults in their regular daily lives.  
8 AESI is based in Palo Alto, California, and was incorporated under the laws of the State of  
9 California in 1998. AESI is a “person” within the meaning of Health & Safety Code  
10 § 25249.11(a), and brought this enforcement action in the public interest pursuant to Health &  
11 Safety Code § 25249.7(d).

12          2.2    AESI served a 60-day “Notice of Violation” (“The Notice”) on The Procter &  
13 Gamble Distributing Company, The Procter & Gamble Manufacturing Company, Zooth, Inc.,  
14 the California Attorney General, the district attorney of every California county, and the city  
15 attorney of every California city with a population of more than 750,000. AESI served the  
16 Notice on June 10, 2004, pursuant to California Health and Safety Code section 25249.7(d) and  
17 section 12903 of Title 22 of the California Code of Regulations.

18          2.3    The Notice alleged, among other things, that Procter & Gamble was in violation  
19 of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code  
20 sections 25249.5 *et seq.* (“Proposition 65”) for failing to warn purchasers of Toothpaste Products  
21 sold in California that the products allegedly expose users to Lead.

22          2.4    For purposes of this Consent Judgment only, the Parties stipulate that this Court  
23 has jurisdiction over the allegations of the violations contained in the Notice, that venue is  
24 proper in the County of Los Angeles, and that this Court has jurisdiction to enter this Consent  
25 Judgment. No public prosecutor has commenced an action regarding the matters raised in the  
26 Notice.

27          2.5    Procter & Gamble denies that any Toothpaste Products have been or are in  
28 violation of Proposition 65 or any other law, and further contends that all of its Toothpaste

1 Products have been and are safe for use as directed. Procter & Gamble, however, wishes to  
2 resolve this matter without further litigation or cost.

3       **2.6** The Parties enter into this Consent Judgment to settle claims alleged in the Notice,  
4 to avoid prolonged and costly litigation, and to promote the public interest. By executing and  
5 complying with this Consent Judgment, no party admits any facts or conclusions of law  
6 including, but not limited to, any facts or conclusions of law regarding any violations of  
7 Proposition 65, or any other statutory, common law or equitable claim or requirement relating to  
8 or arising from the Toothpaste Products. This Consent Judgment shall not be construed as an  
9 admission by Procter & Gamble as to any of the allegations in the Notice and/or the Complaint.

10 **3. Injunctive Relief: Lead Reduction Processes.**

11       **3.1 Use of "Best Practices" in Manufacturing.** With respect to its Toothpaste  
12 Products, Procter & Gamble shall continue to use reasonable efforts to ensure that no additional  
13 Lead is contributed during the manufacturing process for its Toothpaste Products.

14       **3.2 Actions as to Hydrated Silica.** Procter & Gamble has identified that more than  
15 90% of the trace amounts of Lead in the Toothpaste Products derive from the cleaning  
16 component, Hydrated Silica. There is currently only one supplier of Hydrated Silica that can  
17 meet Procter & Gamble's volume and quality requirements. During these months of pre-filing  
18 negotiation with AESI, Procter & Gamble has (a) performed a thorough review of the  
19 manufacturing of the Toothpaste Products and determined that the manufacturing equipment  
20 does not contribute to Lead levels in the final Toothpaste Products; (b) tested packaged and  
21 prepackaged dentifrice, compared the testing results and determined that the product package  
22 does not contribute to Lead levels in the final Toothpaste Products; and (c) explored the  
23 literature for alternative technologies. Pursuant to this Consent Judgment, Procter & Gamble  
24 agrees to do the following:

- 25           (a) Within sixty (60) days after entry of this Consent Judgment, Procter &  
26 Gamble will reduce the Lead (Pb) specification for Hydrated Silica used in Procter &  
27 Gamble's Toothpaste Products from 10 ppm to 7.5 ppm.

1 (i) Procter & Gamble, directly or through others, will test  
2 the first Hydrated Silica raw material receipt used in the Toothpaste  
3 Products after revision of the specification for Hydrated Silica as  
4 outlined in this Consent Judgment to ensure that the Hydrated Silica is  
5 supplied in conformance with the specifications set forth in this  
6 Consent Judgment.

7 (ii) Because Hydrated Silica is a mined substance, Procter &  
8 Gamble cannot ensure that Hydrated Silica with a lead specification of  
9 7.5 ppm will be commercially available at all times. If Hydrated Silica  
10 with such specifications becomes commercially unavailable, Procter &  
11 Gamble will make every effort to use Hydrated Silica with the lowest  
12 level of Lead feasible from supplier(s) able to meet Procter & Gamble's  
13 quality and volume requirements.

14 (b) Within eight (8) months of the entry of this Consent Judgment, Procter  
15 & Gamble will consult Hydrated Silica suppliers in an effort to further explore  
16 alternative technologies for Lead reduction in Hydrated Silica.

17 (c) Within twelve (12) months of entry of this Consent Judgment, Procter  
18 & Gamble will:

19 (i) Explore with potential alternative suppliers their  
20 willingness to make changes to meet Procter & Gamble's volume and  
21 quality requirements for Hydrated Silica.

22 (ii) Conduct a technology search for feasible Lead reduction  
23 techniques; and

24 (iii) Determine if and when a feasible Lead reduction plan  
25 can be implemented;

26 (d) If Procter & Gamble determines that it is feasible to implement a Lead  
27 reduction plan, Procter & Gamble will implement such plan at the earliest feasible  
28 date and report on the status of such implementation as set forth in Paragraph 3.5.

1           **3.3 Feasibility.** The term “feasible” as used in this Consent Judgment means  
2 “reasonable” considering: (1) the availability and reliability of a supply to Procter & Gamble of  
3 lower Lead Hydrated Silica; (2) the cost to Procter & Gamble to use the lower Lead Hydrated  
4 Silica; (3) the performance characteristics, including, but not limited to, formulation  
5 compatibility, performance, safety, taste, efficacy and stability, of an ingredient in any  
6 Toothpaste Product or the Toothpaste Products as a whole; (4) the lawfulness of the alternative  
7 (for example, no such alternative can be allowed to render any Procter & Gamble Toothpaste  
8 Products unlawful under state or federal law), and (5) other reasonable considerations.  
9 Notwithstanding any other provision in this Consent Judgment, Procter & Gamble shall be  
10 required to fulfill only those obligations respecting Lead in its Toothpaste Products that are  
11 feasible as described in this paragraph.

12           **3.4 Naturally Occurring Lead.** For purposes of this Consent Judgment, any Lead  
13 remaining in Procter & Gamble’s Toothpaste Products after Procter & Gamble has undertaken  
14 those actions required by Paragraphs 3.1 through 3.3, above, is deemed “naturally occurring”  
15 within the meaning of section 12501 of Title 22 of the California Code of Regulations.

16           **3.5 Reporting.** On the second anniversary of the entry of this Consent Judgment,  
17 Procter & Gamble shall send a report detailing its compliance with Paragraphs 3.1 through 3.3,  
18 above, including any revised Lead specifications, to AESI’s counsel. This report shall be  
19 marked “HIGHLY CONFIDENTIAL” and shall not be used by AESI for any purpose other than  
20 to determine compliance with the Consent Judgment nor shall AESI disclose the information.  
21 On the third anniversary of the entry of this Consent Judgment, Procter & Gamble shall serve on  
22 AESI a further written report summarizing the activities that Procter & Gamble has undertaken  
23 to comply with this Consent Judgment. This report shall be marked “HIGHLY  
24 CONFIDENTIAL” and shall not be used by AESI for any purpose other than to determine  
25 compliance with the Consent Judgment nor shall AESI disclose the information to others.

26           **3.6** Within 90 days from the date of receipt of Procter & Gamble’s report required by  
27 Paragraph 3.5, AESI will provide the Attorney General’s office, subject to an appropriate  
28 protective order, with a copy of the report and its analysis of the report.

1           **3.7    Records.** Procter & Gamble shall also retain records to establish its compliance  
2 with Paragraph 3.2 for a period of three (3) years following the date of entry of this Consent  
3 Judgment and to make such records available to AESI on a confidential basis if AESI so  
4 requests.

5           **3.8    Confirmation of Compliance.** For purposes of confirming compliance with this  
6 Consent Judgment, AESI shall have the right for three (3) years after the date of the entry of this  
7 Consent Judgment, at AESI's sole expense, to request retain samples of the Hydrated Silica at  
8 the lower specification level of 7.5 ppm and perform independent testing of the material.

9           **3.9    Injunctive Relief Applies Only in California.** All of the foregoing injunctive  
10 relief shall apply only to Toothpaste Products physically sold within California.

11       **4.    Settlement Payments.** In keeping with the concept of, but in lieu of, the statutory  
12 penalties and/or restitution required under the statutes set forth in the Complaint, Procter &  
13 Gamble shall pay to the Trust Account of the Carrick Law Group P.C., by wire transfer in  
14 immediately available funds, the sum of \$387,500.00. This settlement amount shall be due and  
15 payable within five (5) days upon the entry of this Consent Judgment. The sum of \$387,500.00  
16 shall be disbursed by the Carrick Law Group P.C. as follows:

17       **4.1    To AESI:** The amount of \$325,518.52, to be used by AESI for its on-going  
18 compliance monitoring costs of this Consent Judgment, and to reimburse AESI for its  
19 enforcement efforts on behalf of the public interest and the general public.

20       **4.2    To The Carrick Law Group:** The amount of \$27,467.48 in costs and \$34,514 in  
21 attorneys' fees.

22       **5.    Termination of All Claims.**

23       **5.1    Claims Covered and Released.** This Consent Judgment includes the resolution  
24 of all potential claims that were considered or could have been brought by AESI on behalf of the  
25 public interest and the general public regarding Lead in any of Procter & Gamble's Toothpaste  
26 Products. This Consent Judgment is a final and binding resolution between AESI, on behalf of  
27 the public interest and the general public, and Procter & Gamble, of any and all alleged  
28 violations of Proposition 65 and any other statutory or common law claim that could have been

1 asserted by AESI against Procter & Gamble or purchasers or sellers of Procter & Gamble's  
2 Toothpaste Products arising from or related to Lead in Procter & Gamble's Toothpaste Products  
3 up through the date of entry of this Consent Judgment, including, but not limited to, any claims  
4 for attorneys' fees and costs. AESI hereby releases Procter & Gamble, its affiliated companies,  
5 officers, directors and employees and its suppliers, distributors, wholesales, and retailers from  
6 and against the claims described in this paragraph relating to Procter & Gamble's Toothpaste  
7 Products.

8 **5.2 Waiver and Release of Unknown Claims.** To the extent that California Civil  
9 Code section 1542 or similar provisions of law are deemed to apply to AESI's release in  
10 Paragraph 5.1 above, AESI acknowledges and agrees that the release set forth above applies to  
11 all of its claims for injuries, damages, restitution, penalties, or losses related to or arising from  
12 Procter & Gamble's Toothpaste Products, whether those for injuries, damages, restitution,  
13 penalties or losses are known or unknown, foreseen or unforeseen, or patent or latent. AESI  
14 certifies that it is familiar with California Civil Code section 1542. AESI hereby knowingly and  
15 expressly waives its rights under California Civil Code section 1542, which provides as follows:

16 A general release does not extend to claims which the creditor does not  
17 know or suspect to exist in his favor at the time of executing the release  
18 which, if known by him must have materially affected his settlement  
19 with the debtor.

19 Notwithstanding the provisions of section 1542, and for the purpose of implementing a full and  
20 complete release and discharge of all claims, the Parties expressly acknowledge that the Consent  
21 Judgment is intended to include in its effect, without limitation, all the claims described in the  
22 Consent Judgment whether known or unknown, and that the Consent Judgment contemplates the  
23 extinction of all such claims.

24 **6. Covenant Not To Sue.** AESI and Procter & Gamble agree that with regard to those  
25 matters that AESI has herein released and that are described above, neither AESI nor Procter &  
26 Gamble will ever institute a lawsuit or administrative proceedings against the other party, nor  
27 shall any party assert any claim of any nature against any person or entity hereby released with  
28

1 regard to any such matters which have been released. Nothing in this paragraph shall be  
2 interpreted to preclude enforcement of this Consent Judgment pursuant to Paragraph 7, below.

3 **7. Enforcement of Consent Judgment.**

4       **7.1** In the event of any controversy, claim or dispute arising out of or relating to this  
5 Consent Judgment or the breach, enforcement, interpretation or validity thereof, including  
6 determination of the scope or applicability of this agreement to arbitrate, the Parties hereto shall  
7 use their best efforts to resolve their differences. To this effect, the Parties shall consult and  
8 negotiate with each other in good faith, and recognizing their mutual interests, attempt to reach a  
9 solution satisfactory to both Parties. If they do not reach such solution within forty-five (45)  
10 days, upon notice by either party to the other, the controversy, claim or dispute shall be  
11 determined by binding arbitration.

12       **7.2** Each party will provide the other party with the name of two potential arbitrators.  
13 Each proposed arbitrator suggested by a party shall have some relevant professional experience  
14 in manufacturing consumer products. If the Parties are unable to agree upon a single arbitrator  
15 from the four proposed arbitrators, the Parties will submit the issue of the selection of the  
16 arbitrator to the Los Angeles Superior Court for determination.

17       **7.3** The arbitrator shall have the power to resolve and determine any controversy,  
18 claim or dispute arising out of or relating to this Consent Judgment or the breach, enforcement,  
19 interpretation or validity thereof, including determination of the scope or applicability of this  
20 agreement to arbitrate.

21               (a) The arbitrator's power includes, but is not limited to, the power to  
22 determine whether Procter & Gamble has complied with Paragraphs 3.2(c)(iii) and  
23 3.2(d).

24       **7.4** The arbitrator shall decide the process, procedure and rules for resolving such  
25 controversy, claim or dispute.

26       **7.5** The arbitration shall take place in Los Angeles, California, or at any other place  
27 selected by mutual agreement.

28

1           7.6     The Parties agree that each party shall bear its share of the costs of the arbitrator.  
2     However, after the conclusion of the arbitration, the prevailing party may request that the other  
3     party pay the prevailing party's share of the arbitrator's fees. Each party agrees to bear its own  
4     attorneys' fees and costs, if any, incurred during the arbitration.

5           7.7     The party requesting arbitration pursuant to Paragraph 7.1 shall at that time give  
6     notice of the arbitration to the Attorney General's office. The Parties will also report the results  
7     of the arbitration at its conclusion to the Attorney General's office. In the event that the  
8     arbitration results in a proposed modification of the Consent Judgment, the Parties will seek  
9     court approval for such modification pursuant to the procedures set forth in Paragraph 9.1.

10          7.8     The Attorney General's office, subject to an appropriate protective order, has a  
11     right to review all of the documents submitted in the arbitration proceeding.

12     **8.     Application of Consent Judgment.** Paragraphs 5.1 and 5.2 of this Consent Judgment  
13     shall apply to, be binding upon, and inure to the benefit of, the Parties, their divisions,  
14     subdivisions, subsidiaries, affiliates, successors, predecessors and assigns, and the directors,  
15     officers, employees, counsel, and agents of each of them, as applicable, and will inure to the  
16     benefit of the Parties' parent companies, and all of their suppliers, distributors, wholesalers,  
17     retailers and contract manufacturers, and all of their respective directors, officers, employees,  
18     counsel, and agents.

19     **9.     Modification of Consent Judgment.**

20          9.1     This Consent Judgment may be modified or terminated upon written agreement of  
21     Procter & Gamble and AESI, with approval of the Court, or upon noticed motion for good cause  
22     shown. Any party seeking to modify this Consent Judgment must first give notice to the other in  
23     writing of any proposed modification of this Consent Judgment with the basis for the proposed  
24     modification. The Parties shall meet and confer in good faith and attempt to reach agreement on  
25     proposed modification of the Consent Judgment. If a resolution is not reached within forty-five  
26     (45) days of the notice, the party seeking modification may move the Court to modify this  
27     Consent Judgment.  
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1           9.2     The Parties agree that if AESI enters into a settlement agreement with another  
2 toothpaste manufacturer or distributor that imposes injunctive relief that is substantially less  
3 burdensome from the provisions contained in this Consent Judgment, and the settlement  
4 agreement is entered as a Consent Judgment, Procter & Gamble has the right to seek  
5 modification of the Consent Judgment pursuant to Paragraph 9.1 to allow Procter & Gamble to  
6 modify this Consent Judgment to provide for the same injunctive relief imposed on the other  
7 toothpaste manufacturer or distributor.

8     **10.    Publicity.** If either party wants to make any public announcements to the press or  
9 otherwise about this Consent Judgment, that party shall notify the other party. Each party shall  
10 have a right to review any written public announcement made by the other party in advance of  
11 such announcement being made public, but thereafter no party may veto or stop any such  
12 announcement by the other.

13     **11.    Governing Law.** This Consent Judgment shall be governed by, and construed in  
14 accordance with, the laws of the State of California.

15     **12.    Entire Agreement.** The Parties declare and represent that no promise, inducement or  
16 other agreement has been made conferring any benefit upon any party except those contained  
17 herein and that this Consent Judgment contains the entire agreement pertaining to the subject  
18 matter hereof. This Consent Judgment supersedes any prior or contemporaneous negotiations,  
19 representations, agreements and understandings of the Parties with respect to such matters,  
20 whether written or oral. Parol evidence shall be inadmissible to show agreement by, between or  
21 among the Parties to any term or condition contrary to or in addition to the terms and conditions  
22 contained in this Consent Judgment. The Parties acknowledge that each has not relied on any  
23 promise, representation or warranty, expressed or implied, not contained in this Consent  
24 Judgment.

25     **13.    Challenges.** Subject to their rights to apply for a modification of this Consent Judgment  
26 for good cause shown under Paragraph 9 hereof, the Parties agree that they, individually or  
27 collectively, will not seek to challenge or to have determined invalid, void or unenforceable any  
28 provision of this Consent Judgment or this Consent Judgment itself. The Parties understand that

1 this Consent Judgment contains the relinquishment of legal rights and each party has, as each has  
2 deemed appropriate, sought the advice of legal counsel, which each of the Parties has  
3 encouraged the other to seek. Further, no party has reposed trust or confidence in any other  
4 party so as to create a fiduciary, agency or confidential relationship.

5 **14. Construction.** This Consent Judgment has been jointly negotiated and drafted. The  
6 language of this Consent Judgment shall be construed as a whole according to its fair meaning  
7 and not strictly for or against any party.

8 **15. Authority to Stipulate to Consent Judgment.** Each signatory to this Consent Judgment  
9 represents and warrants that each signatory has all requisite power, authority and legal right  
10 necessary to execute and deliver this Consent Judgment and to perform and carry out the  
11 transactions contemplated by this Consent Judgment. Each signatory to this Consent Judgment  
12 represents that each has been duly authorized to execute this Consent Judgment. No other or  
13 further authorization or approval from any person will be required for the validity and  
14 enforceability of the provisions of this Consent Judgment.

15 **16. Cooperation and Further Assurances.** The Parties hereby will execute such other  
16 documents and take such other actions as may be necessary to further the purposes and fulfill the  
17 terms of this Consent Judgment.

18 **17. Counterparts.** This Consent Judgment may be executed in counterparts and has the  
19 same force and effect as if all the signatures were obtained in one document.

20 **18. Notices.**

21 **18.1** All correspondence and notices required by this Consent Judgment to AESI shall  
22 be sent to:

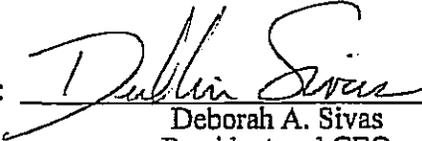
23 Roger Lane Carrick  
24 The Carrick Law Group  
25 350 S. Grand Avenue, Suite 2930  
26 Los Angeles, CA 90071-3406  
27 Tel: (213) 346-7930  
28 Fax: (213) 346-7931  
E-mail: roger@canicklawgroup.com

**18.2** All correspondence and notices required by this Consent Judgment to Procter &  
Gamble shall be sent:



1 Date: August 1, 2005

AMERICAN ENVIRONMENTAL SAFETY  
INSTITUTE, a non-profit California corporation

2  
3  
4 By:   
Deborah A. Sivas  
President and CEO

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## EXHIBIT A

|                            |
|----------------------------|
| Crest Cool Mint Gel        |
| Crest Regular Flavor Paste |
| Crest Icy Mint Stripe I    |
| Gleem                      |
| Crest for Kids Sparkle Fun |
| Crest for Kids Bubble Fun  |

|                                                       |
|-------------------------------------------------------|
| Crest Tartar Protection Fresh Mint Gel                |
| Crest Tartar Protection Regular Flavor Paste          |
| Crest Tartar Protection Whitening                     |
| Crest Whitening plus Scope Minty Fresh Stripe         |
| Crest Whitening plus Scope Cool Peppermint Stripe     |
| Crest Whitening plus Scope Citrus Splash              |
| Crest Rejuvenating Effects                            |
| Crest Whitening plus Scope Cool Peppermint Liquid Gel |
| Crest Whitening plus Scope Minty Fresh Liquid Gel     |
| Crest Rejuvenating Effects Liquid Gel                 |

|                                                   |
|---------------------------------------------------|
| Crest Sensitivity Protection                      |
| Crest Sensitivity Protection Whitening plus Scope |
| Crest Sensitivity Protection Extra Whitening      |

|                           |
|---------------------------|
| Crest Extra Whitening     |
| Crest MultiCare Whitening |

|                                        |
|----------------------------------------|
| Crest Baking Soda Peroxide             |
| Crest Dual Action Whitening Cool Mint  |
| Crest Dual Action Whitening Fresh Mint |
| Crest Vivid White Cool Mint            |
| Crest Vivid White Fresh Mint           |

|                                                                |
|----------------------------------------------------------------|
| Crest Whitening Expressions Cinnamon Rush                      |
| Crest Whitening Expressions Cinnamon Rush Liquid Gel           |
| Crest Whitening Expressions Extreme Herbal Mint                |
| Crest Whitening Expressions Extreme Herbal Mint Liquid Gel     |
| Crest Whitening Expressions Refreshing Vanilla Mint            |
| Crest Whitening Expressions Refreshing Vanilla Mint Liquid Gel |
| Crest Whitening Expression Fresh Citrus Breeze                 |
| Crest Whitening Expression Fresh Citrus Breeze Liquid Gel      |
| Crest MultiCare Cool Mint                                      |

1 **THE COURT HEREBY FINDS:**

2 1. Because no warnings are required by the foregoing stipulated Consent Judgment,  
3 this Court does not have to make any finding regarding compliance with warnings under the  
4 provisions of Health & Safety Code §§ 25249.5-25249.13.

5 2. The Parties' agreement that no civil penalties are warranted is in accord with the  
6 criteria set forth in Health & Safety Code § 25249.7(b)(2), in that payments totaling \$325,518.52  
7 in lieu of such penalties to American Environmental Safety Institute furthers the remedial  
8 purposes established under the statutes as set forth in the Complaint by providing funds for its  
9 compliance monitoring of this Consent Judgment, as well as for its future investigational and  
10 enforcement activities regarding toxic chemicals and Proposition 65, in a manner that is  
11 consistent with the private enforcement mechanism and funds allocation scheme established by  
12 Health & Safety Code § 25192 and § 25249.7 *et. seq.*

13 3. The Court finds that from the total of \$387,500.00 being paid in this settlement,  
14 the Plaintiff will pay its attorneys' fees in the amount of \$34,514.00 plus its attorneys' costs of  
15 \$27,467.48 in costs. The Court finds that these attorneys' fees and costs are reasonable and  
16 appropriate in this action.

17 4. This Consent Judgment is hereby adopted as the ORDER and JUDGMENT of this  
18 Court.

19 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

20  
21 DATED: AUG 09 2005

22  
23 Mary Thornton House

24 HON. MARY THORNTON HOUSE  
25 JUDGE OF THE SUPERIOR COURT  
26  
27  
28

Cal #7

**American Environmental Safety Institute v. Proctor and Gamble**

Tentative Ruling: GRANT

The criteria for approving this proposed settlement is met: (1) the defendants have agreed to a form of injunctive oversight, i.e., to either reduce the specification for Lead in Hydrated Silica from 10 parts-per-million to 7.5 within 60 days and/or to work diligently to seek further feasible reductions in the Lead content of Hydrated Silica over the next year; (2) the award of attorney's fees is reasonable; and, (3) the penalty amount is reasonable. Furthermore, there exists public benefit to the reduction of lead or the search to further reduce lead levels in a product commonly used by the public.

It should be further noted that the settlement is between the parties and has no impact upon whether or not the People of the State of California or any organization may bring another action to obtain relief against the settling defendants. Proposition 65 allows the Attorney General to bring an action, however, the Attorney General has chosen not to bring an action because it does not believe defendants' products threaten the health and safety of consumers. The Attorney General also requests further judicial intervention in this matter by raising the issue as to whether or not plaintiff's expenditure of settlement funds will comply with existing income and reporting requirements. This "request" is a request that the court issue an injunction in favor of the Attorney General despite the fact that the Attorney General is not a party to this action and there is no method for the court to administer a settlement in accord with the dictates of a non-party to an action. Moreover, the Attorney General is silent as to what terms are necessary here and what wrongdoing in the past is somehow relevant here. If the Attorney General believes that plaintiff, in some other action, has used funds in a manner not consistent with the law, then the Attorney General or the administrative agency or other appropriate governmental body charged with oversight of the expenditure of settlement funds should seek appropriate action. If the Attorney General believes that funds in this action may be used in a manner not in accordance with law, then the Attorney General and/or the political body should exercise such oversight and bring the appropriate action if and when such an offense occurs.