

SETTLEMENT AGREEMENT BETWEEN CONSUMER ADVOCACY GROUP, INC.
AND HDEC., INC.

Consumer Advocacy Group, Inc., on behalf of itself and suing in the public interest pursuant to Health and Safety Code section 25249.7, subdivision (d) ("CAG") and HDEC., Inc. ("HDEC") (collectively, "Parties") enter into this agreement ("Settlement Agreement") to settle the case entitled *Consumer Advocacy Group, Inc. v. International Pavement Solutions, Inc., et al.*, and pending in the Superior Court of California for the County of Alameda, Case No. RG07363352 ("Lawsuit"), as follows:

1.0 Introduction

1.1 CAG is an entity based in Los Angeles, California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products. HDEC disputes this.

1.2 CAG alleges that HDEC is a company that employs ten or more persons and acts primarily as a paving contractor. HDEC disputes this.

1.3 CAG alleges that HDEC uses paving materials, some of which contain asphalt or coal tar, the use of which is alleged to expose persons to acetaldehyde; arsenic (inorganic arsenic compounds); benz[a]anthracene; benzene; benzo[a]pyrene; benzo[b]flouranthene; benzo[k]flouranthene; beryllium and beryllium compounds; 1,3-butadiene; cadmium and cadmium compounds; carbazole; chromium (hexavalent compounds); chrysene; dibenz[a,j]acridine; dibenz[a,h]anthracene; dibenzo[a,e]pyrene; dibenzo[a,h]pyrene; dibenzo[a,i]pyrene; dibenzo[a,l]pyrene; dichloromethane (methylene chloride); formaldehyde (gas); indeno[1,2,3-cd]-pyrene; lead and lead compounds; 5-methylchrysene; nickel and nickel compounds; silica, crystalline; tetrachloroethylene (perchloroethylene); toluene diisocyanate; trichloroethylene; carbon disulfide; mercury and mercury compounds; and toluene (collectively, "Covered Chemicals"). HDEC disputes this.

1.4 The Covered Chemicals are substances listed in the regulations promulgated under the California Safe Drinking Water and Toxic Enforcement Act, Health & Safety Code sections 25249.5, et seq. ("Proposition 65") as chemicals known to the State of California to cause cancer or reproductive harm.

1.5 On August 29, 2006, CAG served public enforcement agencies and HDEC with a document entitled "60-Day Notice of Violation" ("Notice"). The Notice alleged that HDEC violated Proposition 65 by failing to warn its employees and other persons in California that some of the paving materials used by HDEC expose those persons to the Covered Chemicals.

1.6 On December 27, 2007, CAG filed the Lawsuit alleging HDEC, among other entities, violated Proposition 65 by exposing employees and others to Covered Chemicals contained in asphalt paving products without providing “clear and reasonable” warnings. The alleged exposures constitute “consumer product,” “occupational,” and “environmental” exposures pursuant to California Code of Regulations, title 22, section 12601. HDEC denies the material allegations of the Lawsuit and liability for the cause of action alleged in the complaint.

1.7 The Parties enter into this Settlement Agreement for settlement of certain disputed claims between the Parties as alleged in the CAG Complaint and Notice to avoid prolonged and costly litigation between the Parties.

1.8 By execution of this Settlement Agreement, the Parties admit no facts or conclusions of law, including those regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, including any admission concerning the meaning of the terms “knowingly and intentionally expose” or “clear and reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed as evidence of an admission or evidence of fault, wrongdoing, or liability by HDEC, its officers, directors, employees, or parent, subsidiary or affiliated corporations, in any administrative or judicial proceeding or litigation. Except for the cause of action and allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CAG or HDEC may have against one another in any other pending legal proceeding.

2.0 Release

2.1 Upon HDEC’s completion of the requirements of the Opt-In process described in Part 5 of the Consent Judgment in *Consumer Advocacy Group, Inc. v. All American Asphalt, et al.*, Alameda Superior Court Case no. RG03097307 (consolidated with lead case *The People of the State of CA. v. Blue's Roofing Company, Inc, et al.*, Alameda Superior Court Case no. RG03082954) (“Consent Judgment”) CAG releases and forever discharges HDEC, its affiliates, subsidiary and parent corporations, or their affiliated companies, and each of their officers, directors, agents, servants, partners, stockholders, attorneys, employees, representatives, and each of their respective successors and assigns (collectively, “Released Parties”) from rights, claims, causes of action, damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorney fees, costs and expenses related to or arising out of the facts and claims alleged in the Lawsuit. Without limiting the foregoing, the Parties intend the scope of this

the Warning in writing to all employees receiving training as part of its Hazard Communication Program pursuant to Paragraph 4.2.

4.2 Hazard Communication Program. At the time HDEC executes this Settlement Agreement, it shall simultaneously execute a declaration under penalty of perjury, in the form attached as Exhibit B to the Settlement Agreement or Exhibit F to the Consent Judgment, certifying that it has a Hazard Communication Program. HDEC shall submit the signed declaration to CAG as detailed in the Consent Judgment.

4.3 Alternative Warning Requirements. The Legislature may amend Proposition 65 or administrative agencies of the State of California, including the Attorney General or the OEHHA, may initiate or promulgate regulations under Proposition 65 or issue other interpretive guidance, including a safe-use determination, which may affect the requirement to provide warnings under Proposition 65 for the Covered Chemicals. If any action by any public entity permits any form(s) of warning other than the Warning attached hereto, or varies the form or content of the Warning, then HDEC may satisfy the obligations under Paragraph 4.1 by providing warnings in a manner consistent with such subsequently promulgated law, regulation or interpretive guidance. Nothing in this Settlement Agreement, however, shall relieve HDEC from the obligation to comply with any new requirement imposed by the State of California after the Parties execute this Settlement Agreement. If other statutes require warnings, HDEC shall provide those warnings as required by those laws. If any law, rule, regulation, or final decision of any legislative, judicial or executive body renders invalid or unenforceable the warning requirements of Paragraph 4.1, HDEC has no further obligations under Paragraph 4.1. Should CAG disagree it may petition the Court for enforcement of the Settlement Agreement. Notwithstanding any other provision of this Settlement, should HDEC cease to implement or modify the warning required here due to the occurrence of the events described in this Paragraph, it shall provide written notice to CAG of its intent to do so no less than 30 days in advance. CAG shall notify HDEC in writing of any objection within 30 days of its receipt of such notice.

4.4 No Other Warnings Required. In the interests of a full and final resolution of this matter, the Parties agree that the Warning is sufficient. HDEC maintains that law requires no warning. CAG maintains that law requires additional warnings beyond those provided here. Specifically, CAG maintains that environmental and consumer product exposure warnings are required for exposure to the Covered Chemicals in addition to the occupational warnings provided for here. Nonetheless, in recognition of and in consideration for the measures below that HDEC will adopt and the effect those measures will have, CAG releases HDEC from any obligation to warn for exposure to the Covered Chemicals other than as provided here. CAG reserves the right to allege that

persons, other than HDEC, are obligated to provide warnings for exposure to the Covered Chemicals.

4.5 New Scientific Data. Any warning obligation under Section 4 for any Covered Chemical may be eliminated if new scientific data causes: (a) the deletion of that Covered Chemical from the list published by the State pursuant to Health and Safety Code section 25249.8 or any successor legislation, or (b) that Covered Chemical to qualify for an exemption pursuant to Health and Safety Code section 25249.10 or any successor legislation. HDEC may modify or remove the Warning to reflect that deletion or exemption, unless HDEC exposes or causes to be exposed any individual to any other Covered Chemical requiring a Warning pursuant to this Settlement Agreement. Should CAG not agree with the modification or removal of a Warning pursuant to this paragraph, CAG may petition the Court.

4.6 Safe Use Determination. Notwithstanding any other provision of this Settlement Agreement, at any time after HDEC completes of the requirements of the Opt-In process described in Part 5 of the Consent Judgment, HDEC may seek a Safe Use Determination (“SUD”) for one or more of the Covered Chemicals from the OEHHA (or its successor) pursuant to Section 12204 of Title 22 of the California Code of Regulations (or any successor legislation or regulation). In such event, the terms of this Settlement Agreement shall not operate with any prejudice to the SUD. Provided HDEC furnishes notice to CAG at least 30 days before filing the SUD application with the OEHHA, which shall include a copy of the application, so as to provide CAG a meaningful opportunity to comment to OEHHA on the matter, then, should OEHHA issue a SUD that there is no obligation to provide warnings under Proposition 65 with respect to the Covered Chemical(s) identified in the application, HDEC shall have no obligation pursuant to Paragraph 4.1 as to the Covered Chemical(s) identified in the SUD.

4.7 Exposure Reduction Measures. HDEC shall institute certain measures related to the use of the asphalt products in order to reduce or mitigate occupational, environmental, or consumer exposure to one or more of the Covered Chemicals. Because of the benefits of these measures CAG will not insist upon warnings for “consumer product” or “environmental” exposures, within the meaning of California Code of Regulations, Title 22, Section 12601, subdivisions (b) and (d), respectively. To reduce potential exposure to the Covered Chemicals and reduce pollution in California, HDEC shall limit the representative temperature of asphalt products in its control to either (a) no greater than 375°F, or (b) 25°F below the product’s “flash point” (as determined by the AASHTO test method T48 or ASTM test method D92). HDEC may choose between measures (a) and (b) at its discretion. No party shall deem either measure to be more effective than the other. The actions taken by HDEC pursuant to this Paragraph are solely for purposes of compliance with this Settlement Agreement and are not meant to, and do not, change any

manufacturer's or other project specifications. As with every other provision in this Settlement Agreement, only the Parties may enforce compliance with this Paragraph.

4.8 **Enforcement of Exposure Reduction Measures.** CAG intends to monitor compliance with Paragraph 4.7 through whatever measures it deems appropriate, so long as such measures do not violate any law. Should CAG believe that HDEC is not complying with its obligations under Paragraph 4.7, CAG may seek enforcement of this Settlement Agreement.

5.0 Opt-In Procedure and Premium

5.1 **Opt-In Payment and Premium and Procedure.** Concurrent with executing this Settlement Agreement, HDEC is opting into the Consent Judgment as an Opt-In Defendant as defined in Paragraph 1.20 of the Consent Judgment. Concurrent with executing this Settlement Agreement, HDEC is executing an Opt-In Agreement, in the form set forth at Exhibit E of the Consent Judgment. C HDEC shall distribute the executed Opt-In Agreement to Manatt, Phelps & Phillips, LLP and shall provide a copy to Yeroushalmi & Associates. HDEC shall simultaneously execute a declaration under penalty of perjury, in the form set forth at Exhibit F of the Consent Judgment or Exhibit B of the Settlement Agreement, certifying that it has a Hazard Communication Program. HDEC has calculated the amount due under the Opt-In Agreement (pursuant to Paragraphs 5.4, 5.5, and 4.2 of the Consent Judgment) as \$3,000.00. Therefore, HDEC shall pay an Opt-In Payment and Premium, if any, of \$3,000.00 to the General Escrow Account as defined in Paragraph 1.14 of the Consent Judgment. CAG neither disagrees with nor supports HDEC's finding as to the amount of the Opt-In Payment and Premium, if any, it is to pay the General Escrow Account. HDEC releases and agrees to hold harmless CAG with regard to any issue concerning the allocation, distribution, or amount paid under this section.

5.2 **Payment to Yeroushalmi & Associates.** Within 15 days of completing the requirements of the Opt-In process described in Part 5 of the Consent Judgment, HDEC shall pay \$12,000.00 to CAG for attorney fees and costs. Payment shall be to "Yeroushalmi & Associates." CAG represents and warrants that CAG has authorized the payment of attorney fees and costs, and that the payment and any application or distribution of such payment will not violate any agreement between CAG and its attorneys with any other person or entity. HDEC does not object to this allocation.

6.0 Authority To Enter Into Settlement Agreement

6.1 CAG represents that the signatory to this Settlement Agreement has the authority to enter into this Settlement Agreement on behalf of CAG and to bind legally CAG. HDEC represents that the signatories to this Settlement Agreement

have the authority to enter into this Settlement Agreement on behalf of HDEC and to bind legally HDEC.

7.0 Execution in Counterparts and Facsimile

7.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile signature shall be as valid as the original.

8.0 Entire Agreement

8.1 This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind any of the Parties.

9.0 Modification of Settlement Agreement

9.1 Any modification to this Settlement Agreement shall be in writing by the Parties.

10.0 Application of Settlement Agreement

10.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, the CAG and the Released Parties identified above.

11.0 Severability

11.1 In the event that a court of competent jurisdiction finds unenforceable any of the provision of this Settlement, such finding shall not affect adversely the validity of the enforceable provisions.

12.0 Governing Law

12.1 The laws of the State of California shall govern the terms of this Settlement Agreement.

13.0 Attorney Fees

13.1 In the event that a dispute arises concerning any provision(s) of the Settlement Agreement, and such disputes are resolved by the Court or through any alternative dispute resolution proceeding, the prevailing party in such action or proceeding shall be entitled to recover costs and reasonable attorney fees.

14.0 Notification Requirements

14.1 Any notice required or permitted hereunder shall be effective only if in writing and delivered in person or sent by telecopy, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For CAG:

Reuben Yeroushalmi
Yeroushalmi & Associates
3700 Wilshire Blvd., Suite 480
Los Angeles, CA 90010
Fax: 213.382.3430

For HDEC:

Kelli Hawley, Esq.
Dale Braden & Hinchcliffe
3415 S Sepulveda Blvd 9FL
Los Angeles, CA 90034
Fax: 310.398.5317

Any party may change its designee(s) for purposes of notification by providing notice of such change pursuant to this section.

Dated: _____

By: _____
CONSUMER ADVOCACY GROUP, INC.

Dated: _____

By: _____
HDEC., INC.

As to form only:

YEROUSHALMI & ASSOCIATES

Dated: _____

By: _____
Reuben Yercushalmi
Attorneys for Consumer Advocacy Group, Inc.

DALE BRADEN & HINCHCLIFFE

Dated: _____

By: _____
Kelli Hawley, Esq.
Attorneys for HDEC., Inc.

EXHIBIT A – OCCUPATIONAL WARNING

WARNING: CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER AND BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM ARE PRESENT IN YOUR WORK AREA. Asphalt, sand, diesel engine exhaust and other materials in your work area contain chemicals known to the State of California to cause cancer and/or reproductive harm. Exposure to some or all of these chemicals occurs during paving operations and related activities. Always familiarize yourself with the hazards of the materials and equipment you are using and follow the precautions indicated on product labels, Material Safety Data Sheets and your health and safety training program.

EXHIBIT B – DECLARATION REGARDING HCP

I, _____, declare and state as follows:

1. I am the _____ of _____ (“Defendant”), which has elected to join the Consent Judgment in the action *Consumer Advocacy Group, Inc., and Environmental World Watch, Inc., in the interest of, and on Behalf of the Public v. All American Asphalt, Astro Paving and Does 1-1,000*, filed in the Superior Court of the State of California for the County of Alameda under Case No. RG 03097307, and I have the authority to make this declaration on Defendant’s behalf.

2. I have personal knowledge of the matters stated herein and, if called upon to testify, could competently testify thereto.

3. Defendant has in effect a Hazard Communication Program, which Defendant adopted and now administers pursuant to California law and the governing regulations. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this ___ of _____, 200_, at _____, California.

Signature
Print name: _____
For: _____
Name of Defendant

EXHIBIT B - DECLARATION REGARDING HCP

1. Steve L. Bradley, declare and state as follows:

1. I am the CFO of HDEC, Inc. ("Defendant"), which has elected to join the Consent Judgment in the action *Consumer Advocacy Group, Inc., and Environmental World Watch, Inc., in the interest of, and on Behalf of the Public v. All American Asphalt, Astro Paving and Does 1-1,000*, filed in the Superior Court of the State of California for the County of Alameda under Case No. RG 03097307, and I have the authority to make this declaration on Defendant's behalf.

2. I have personal knowledge of the matters stated herein and, if called upon to testify, could competently testify thereto.

3. Defendant has in effect a Hazard Communication Program, which Defendant adopted and now administers pursuant to California law and the governing regulations. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5th of Sept, 2008, at Lancaster, California.

Steve L. Bradley
Signature

Print name: Steve L. Bradley

For: HDEC, Inc.

Name of Defendant

14.0 Notification Requirements

14.1 Any notice required or permitted hereunder shall be effective only if in writing and delivered in person or sent by telecopy, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For CAG:

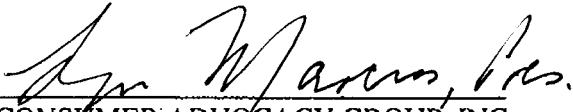
Reuben Yeroushalmi
Yeroushalmi & Associates
3700 Wilshire Blvd., Suite 480
Los Angeles, CA 90010
Fax: 213.382.3430

For HDEC:

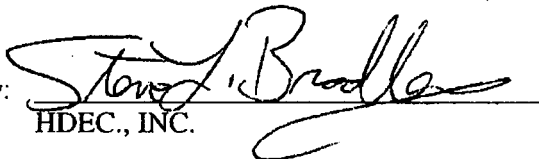
Kelli Hawley, Esq.
Dale Braden & Hinchcliffe
3415 S Sepulveda Blvd 9FL
Los Angeles, CA 90034
Fax: 310.398.5317

Any party may change its designee(s) for purposes of notification by providing notice of such change pursuant to this section.

Dated: 3/23/09

By: 
CONSUMER ADVOCACY GROUP, INC.

Dated: 9/5/09

By: 
HDEC., INC.

As to form only:

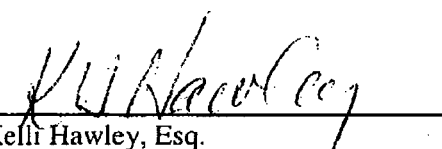
YERUSHALMI & ASSOCIATES

Dated: 3/24/09

By: 
Reuben Yeroushalmi
Attorneys for Consumer Advocacy Group, Inc.

DALE BRADEN & HINCHCLIFFE

Dated: _____

By: 
Kelli Hawley, Esq.
Attorneys for HDEC., Inc.