

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and American Lawn Mower Co. and The Great States Corporation (collectively, “ALM”), with Englander and ALM individually referred to as a “Party” and collectively as the “Parties.” Englander is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. ALM employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Englander alleges that ALM manufactures, imports, sells, or distributes for sale in the State of California, reel mowers with vinyl/PVC hand grips that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the state of California to cause birth defects and other reproductive harm.

As set forth in Section 1.5, ALM denies these allegations and contends that no warning is required by Proposition 65 in connection with the sale of its reel mowers in California.

1.3 Product Description

The products covered by this Settlement Agreement are reel mowers with vinyl/PVC hand grips containing DEHP that are manufactured, sold, or distributed for sale in California by ALM including, but not limited to, the *Scotts 16” Elite Push Reel Mower, Model No. 415-16S (#0 26479 04156 6)*. The reel mowers with vinyl/PVC hand grips containing DEHP shall, where appropriate, be referred to as the “Products.”

1.4 Notice of Violation

On or about November 21, 2012, Englander served ALM and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that ALM violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

ALM denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by ALM of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by ALM of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by ALM. This Section shall not, however, diminish or otherwise affect ALM’s obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean June 26, 2013.

2. INJUNCTIVE RELIEF

2.1 Reformulated Products

Commencing on or before February 1, 2014, and continuing thereafter, ALM shall only make available for sale or purchase in California Reformulated Products. For purposes of this Settlement Agreement, “Reformulated Products” are Products that have been certified by ALM’s suppliers, and confirmed by testing of a single Product from each supplier at an accredited domestic laboratory of ALM’s choosing, to contain a maximum of 1,000 parts per million DEHP content when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies

3580A and 8270C, or equivalent methodologies utilized by any government agencies for the purpose of determining DEHP content in a solid substance.

2.2 Interim Warning Program for Non-Reformulated Products

Commencing on the Effective Date, ALM shall institute a warning program in accordance with California Health and Safety Code sections 25601 et seq. for the *Scotts 16" Elite Push Reel Mower, Model No. 415-16S (#0 26479 04156 6)*, and by July 1, 2013, for all Products other than Reformulated Products. ALM represents that, in response to the Notice, it implemented a consumer warning program and has been including the below language in the Safety Rules section of its user manuals for the Scotts 16" Push Reel Mowers identified in the Notice. ALM further represents that it will provide the below warning for all Products, including the Noticed exemplar, beginning on July 1, 2013. Englander neither condones nor opposes the method of warning transmission employed by ALM for this interim warning program.

2.2.1 Retail Store Sales

(a) Product Labeling

In complete and full satisfaction of the warning requirement set forth in Section 2.2, ALM may affix a warning to the Products directly or to the packaging, labeling, or any other written, printed or graphic matter affixed to or accompanying the Products or its container or wrapper, as follows:

WARNING: This product contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

(b) Point-of-Sale Warnings

Alternatively, ALM may provide warning signs in the form below to its retail outlets in California with instructions to post the signs in close proximity to the point of display of any such Products for the benefit of its customers.

WARNING: This product contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

Where any such Products are sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), and to the extent ALM elects to provide a warning pursuant to Section 2.2.1(b), the following statement must be used:

WARNING: The following product(s) contain chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

3. MONETARY PAYMENTS

3.1 Payments Pursuant to Health & Safety Code Section 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, ALM shall pay up to a total of \$23,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code sections 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Englander, as follows:

3.1.1 Initial Civil Penalty

Within ten (10) business days of receiving a fully executed copy of the Agreement, ALM shall pay an initial civil penalty in the amount of \$6,000. ALM shall issue two separate checks to: (a) “OEHHA” in the amount of \$4,500; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$1,500. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.1.2 Final Civil Penalty

ALM shall pay a final civil penalty of \$17,000 on or before February 1, 2014. The final civil penalty shall be waived in its entirety, however, if, no later than December 31, 2013, an officer or other representative of ALM provides Englander with written notice that, as

of the date of such notice and continuing into the future, ALM has met the reformulation standard specified in Section 2 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by ALM are Reformulated Products. The notice in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Unless waived, ALM shall issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$12,750; and (b) "The Chanler Group in Trust for Peter Englander" in the amount of \$4,250.

3.2 Attorney Fees and Costs

The parties acknowledge that Englander and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. ALM then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due Englander's counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed through the mutual execution of this agreement. ALM shall pay \$20,500 for fees and costs incurred as a result of investigating, bringing this matter to ALM's attention, and negotiating a settlement in the public interest. ALM shall issue a separate 1099 Form for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before ten (10) business days after receipt of a fully executed copy of the Agreement, to the address listed in Section 3.3.1(a) below.

3.3 Payment Procedures

3.3.1 Issuance of Payments. Payments shall be delivered as follows:

- (a) All payments owed to Englander, pursuant to Sections 3.1.1 through 3.1.2, shall be delivered to the following payment address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street

Parker Plaza, Suite 214
Berkeley, CA 94710

- (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1.1 through 3.1.2, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in Section 3.3.1(a), as proof of payment to OEHHA.

3.3.2 Issuance of 1099 Forms. After each penalty payment, ALM shall issue separate 1099 forms for each payment to Englander, whose address and tax identification number will be provided upon request after this Settlement Agreement is fully executed by the Parties, and OEHHA (EIN: 68-0284486) at the addresses listed in Section 3.3.1(b) above.

4. CLAIMS COVERED AND RELEASED

4.1 Englander’s Release of ALM

This Settlement Agreement is a full, final, and binding resolution between Englander and ALM of any violation of Proposition 65 that was or could have been asserted by Englander, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against ALM, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, insurers, and each entity to whom ALM directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on unwarned exposures to DEHP contained in Products sold or distributed for sale by ALM in California prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Englander, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against ALM and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP in Products manufactured, sold, or distributed for sale in California by ALM prior to the Effective Date.

4.2 ALM's Release of Englander

ALM, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against Englander and his attorneys and other representatives, for any and all actions taken or statements made by Englander and his attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then ALM may provide written notice to Englander of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

7. **NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the following addresses:

For American Lawn Mower Co. & The Great States Corporation:

Robert Kersey, President
American Lawn Mower Co.
21 North Granville Avenue
Muncie, IN 47303

Robert Kersey, President
The Great States Corporation
830 Webster Avenue
Shelbyville, IN 46176

With a copy to:

Levi W. Heath, Esq.
Barnes & Thornburg LLP
2049 Century Park East, Suite 3550
Los Angeles, CA 90067-3210

For Peter Englander:

The Chanler Group
Attn: Proposition 65 Coordinator
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

Any party may, from time to time, specify in writing to the other party a change of address to which all notices and other communications shall be sent.

8. **COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts, and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. POST-EXECUTION ACTIVITIES

Englander agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

10. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: July 8, 2013 _____

Date: 7-1-13 _____

By:  _____
Peter Englander

By:  _____
Robert Kersey, President
American Lawn Mower Co.
& The Great States Corporation