

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Northern Tool & Equipment Company, Incorporated (“NTE”), with Englander and NTE each individually referred to as a “Party” and collectively as the “Parties.” Englander is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. NTE 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, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Englander alleges that NTE sells and distributes for sale in California, vinyl/PVC fuel pump nozzle grips (“Nozzle Grips”) containing the phthalate chemical Di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Englander alleges that NTE failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Nozzle Grips.

1.3 Product Description

The products covered by this Settlement Agreement are Nozzle Grips containing DEHP that are manufactured, sold or distributed for sale in California by NTE, including, but not limited to, the Nozzle Grips offered in connection with the *Roughneck 3/4in. NPT Inlet Automatic Fuel Nozzle, Item# 37658* (“Products”).

1.4 Notice of Violation

On March 23, 2016, Englander served NTE and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that NTE violated

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Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its Nozzle Grips. 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

NTE denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed 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 NTE of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by NTE of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by NTE. This Section shall not, however, diminish or otherwise affect NTE'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 September 1, 2016.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION STANDARD

2.1 Reformulation Standard

Commencing on September 1, 2016, and continuing thereafter, NTE agrees that Products it manufactures for sale or purchases for sale in or into California will be, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each component when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid

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substance.

2.2 Warnings Required

Commencing on the Effective Date, for all Products other than Reformulated Products, that NTE manufactures for sale or purchases for sale in or into California shall have clear and reasonable warnings. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use.

(a) Product Labeling.

NTE shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in California that states:

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

Or

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

(b) Mail Order Catalog and Internet Sales.

NTE sells Products via mail order catalog and/or the internet, to customers located in California. NTE shall provide warnings for such Products sold via mail order catalog or the internet to California residents, if warnings are not provided on product labeling as set forth in subsection (a) above. Warnings given in the mail order catalog or on the internet shall not be in lieu of warnings on the product and shall identify the *specific* Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

(i) Mail Order Catalog Warning.

Any warning provided in a mail order catalog shall be in the same type size or larger than

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the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

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

Or

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

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, NTE may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP, a chemical known to the State of California to cause cancer, birth defects and other reproductive harms.

Or

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain a chemical known to the State of California to cause cancer, birth defects and other reproductive harms.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, NTE must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

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(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

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

Or

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

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page in a manner that, a consumer will reasonably understand, clearly associates the symbol with the product(s) to which the warning applies, as follows:

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

Or

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

Handwritten signature and date:
8/26/2016

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, NTE agrees to pay \$4,500.00 in civil penalties. On the Effective Date, NTE shall pay the civil penalty in the amount of \$4,500.00. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Englander, and delivered to the address in Section 3.3 herein. NTE will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$3,375.00 and (b) “Peter Englander, Client Trust Account” in the amount of \$1,125.00. Englander’s counsel will deliver OEHHA’s portion of the penalty paid under this Settlement Agreement.

3.2 Attorneys’ 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 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, NTE expressed a desire to resolve Englander’s fees and costs. The Parties reached an accord on the compensation due to Englander and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, on the Effective Date, NTE agrees to pay \$25,000.00 in the form of a check made payable to “The Chanler Group” for all fees and costs incurred investigating, bringing this matter to the attention of NTE’s management, and negotiating a settlement in the public interest.

*A. K. Koster
8/26/2016*

3.3 Payment Address

All payments under this Settlement Agreement shall be delivered to the following address:

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

4. CLAIMS COVERED AND RELEASED

4.1 Englander's Release of NTE

This Settlement Agreement is a full, final, and binding resolution between Englander and NTE, of any violation of Proposition 65 that was or could have been asserted by Englander, on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against NTE, its parents, subsidiaries, affiliated entities under common ownership (including but not limited to Northern Tool & Equipment Catalog Company, Inc.), directors, officers, employees, attorneys, and each entity to whom NTE directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged or actual failure to warn about exposures to DEHP from Products sold or distributed for sale by NTE in California before the Effective Date.

In further consideration of the promises and agreements herein, Englander, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to exposures to DEHP from Products manufactured, distributed, sold and/or

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offered for sale by NTE before the Effective Date. The releases provided by Englander under this Settlement Agreement are provided solely on Englander's own behalf and not on behalf of the public in California.

4.2 NTE's Release of Englander

NTE, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims 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 deemed 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 NTE may provide written notice to Englander of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

7. NOTICE

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

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For NTE:

For Englander:

Alan C. Kotula Senior Vice President Northern Tool & Equipment Company, Inc. P.O. Box 1219 Burnsville, MN 55337	Proposition 65 Coordinator The Chanler Group 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710-2565
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Any Party may, from time to time, specify in writing to the other 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. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

10. MODIFICATION

This Settlement Agreement may be modified only by 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, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 8/25/2016

Date: _____

By: 
PETER ENGLANDER

By: _____
Alan C. Kotula, Senior Vice President
NORTHERN TOOL & EQUIPMENT CO, IN

For NTE:

For Englander:

Alan C. Kotula Senior Vice President Northern Tool & Equipment Company, Inc. P.O. Box 1219 Burnsville, MN 55337	Proposition 65 Coordinator The Chanler Group 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710-2565
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AGREED TO:

AGREED TO:

Date: _____

Date: 8/26/2016

By: _____

PETER ENGLANDER

By: [Signature] SUP NTE

Alan C. Kotula, Senior Vice President
NORTHERN TOOL & EQUIPMENT CO, IN