

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and voluntarily and freely entered into by and between the Rosemere Neighborhood Association ("RNA"), the United States Environmental Protection Agency ("EPA"), and EPA Administrator Lisa P. Jackson ("Jackson") (EPA and Jackson are referred to collectively herein as "Defendants").

RECITALS

A. In 2003, RNA filed an administrative complaint with EPA's Office of Civil Rights ("OCR") pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d ("Title VI") and 40 C.F.R. Part 7 ("Part 7") alleging that the City of Vancouver's (the "City") use of EPA funding had a discriminatory impact on minority communities.

B. After RNA filed the initial Title VI complaint, the City initiated an investigation into RNA's internal operations and revoked City recognition of RNA as an official neighborhood association. On December 13, 2003, and January 15, 2004, RNA filed two letters with OCR forming the basis of an administrative complaint of retaliation ("Retaliation Complaint") alleging that the City retaliated against RNA for filing its initial Title VI complaint. OCR administratively docketed the Retaliation Complaint as OCR File No. 01r-03-R10.

C. EPA failed to accept and respond to the Retaliation Complaint within 20 days as required by 40 C.F.R. § 7.120. On July 1, 2005, RNA filed suit in the Western District of Washington (the "District Court") to compel EPA to accept the complaint for investigation. *Rosemere Neighborhood Ass'n v. U.S. Env't'l Protection Agency*, Civil No. 05-5443-FDB (W.D. Wa.).

D. On August 16, 2005, OCR accepted the Retaliation Complaint for investigation. EPA moved to dismiss the pending complaint as moot pursuant to Fed. R. Civ. Pro. 12(b)(1). On December 7, 2005, the District Court granted EPA's motion to dismiss.

E. After accepting the Retaliation Complaint for investigation, OCR failed to inform RNA of its preliminary findings within one hundred and eighty (180) days, as required by 40 C.F.R. § 7.115(c)(1).

F. On or about February 20, 2007, RNA filed suit against the EPA and Stephen L. Johnson, the former Administrator of the EPA, in the District Court. See *Rosemere Neighborhood Association v. EPA*, U.S. Dist. Ct., W.D. Wash., Case No. 07-

5080-BHS (the "Federal Court Action").

G. On April 30, 2007, OCR issued a final investigative report and decision letter in response to the Retaliation Complaint.

H. On December 17, 2007, the District Court granted Defendants' motion to dismiss the Federal Court Action as moot.

I. On September 17, 2009, the Ninth Circuit Court of Appeals reversed and remanded the District Court's dismissal order, finding that RNA's claims were not moot. *Rosemere Neighborhood Ass'n v. U.S. Env't'l Protection Agency*, 581 F.3d 1169 (9th Cir. 2009). In doing so, the Ninth Circuit held that EPA's delay in responding to the Retaliation Complaint was part of a "consistent pattern of delay by the EPA." 581 F.3d at 1175.

J. The parties desire to stipulate to entry of judgment and declaratory relief in RNA's favor with an award of costs and fees to RNA, and to settle fully the Federal Court Action and all differences between them related to EPA's timeliness in processing the Retaliation Complaint.

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, by this AGREEMENT, the parties agree as follows:

1. The parties will concurrently stipulate that judgment and declaratory relief should be entered in favor of RNA with a finding that OCR's failure to process the Retaliation Complaint in accordance with the timeline set forth in 40 C.F.R. § 7.115(c)(1) constitutes agency action unlawfully withheld pursuant to the Administrative Procedure Act, 5 U.S.C. § 706(1). In addition, the stipulated judgment includes an award of costs and fees in favor of RNA in the amount of \$113,000.00 for fees and \$2,943.49 for costs. The stipulation will be filed with the Court within five business days following the date of execution by the parties of the Agreement. The "date of execution by the parties of the Agreement" shall be the first calendar date on which all signatories to the Agreement have signed and dated the signature page below. This Agreement shall have no effect unless and until the District Court enters the stipulated judgment in the form provided by the Parties.

2. EPA will meet the regulatory deadlines set forth in 40 C.F.R. § 7.115 and 40 C.F.R. § 7.120 with respect to any Title VI complaint filed with OCR by RNA within five years of the date of execution by the parties of the Agreement in which RNA is the aggrieved party. Complaints will be filed with OCR at Mail Code 1201A, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

3. RNA agrees that if it files a Title VI complaint with OCR within the five year time period set forth in paragraph 2 above, simultaneously with filing the complaint with OCR it will send a copy of the Complaint to the Associate General Counsel, Civil Rights and Finance Law Office (MC 2399A), EPA Office of General Counsel, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

4. Within twenty (20) days of the date of execution by the parties of the Agreement and during the term of this Agreement, EPA shall provide RNA with quarterly status updates for all Title VI complaints in substantially the same form as Exhibit A except that EPA will not identify the parties that have filed Title VI complaints. EPA shall provide quarterly updates to RNA by the 15th day of January, April, July and October except that no quarterly update is required on April 15, 2010.

5. EPA will be relieved of its obligations set forth in Paragraph 2 above where the delay is due to circumstances beyond EPA's control, which shall include the following: (1) acts of a public enemy; (2) war and warlike events (including acts of terrorism); (3) catastrophic weather conditions such as hurricanes, tornadoes and typhoons; (4) fire, earthquakes, floods, epidemics, quarantine restrictions; (5) sabotage, riot and embargoes; (6) delays attributable to RNA; and (7) acts of Congress or another court making performance impossible or unlawful.

6. If EPA becomes aware that it is likely to miss a regulatory deadline set forth in 40 C.F.R. § 7.115 or 40 C.F.R. § 7.120, EPA will promptly provide written notice to RNA. Such notice will include a description of the cause for missing the deadline and a new deadline by which agency action will be taken.

7. The District Court shall retain jurisdiction to enforce the terms of this Agreement. However, the parties agree that the Court will not be asked to exercise jurisdiction to enforce the Agreement until the dispute resolution process set forth in Paragraph 8 is exhausted.

8. Should OCR fail to process a Title VI Complaint filed by RNA in accordance with its obligations under Paragraph 2 above, RNA will provide OCR with written notice that it believes a breach of this Agreement has occurred. Thereafter, the parties shall enter into good faith discussions about the reasons for OCR's delay and OCR's proposed plan for completion of the processing. After 30 days have passed since RNA provided notice to OCR, RNA may move the Court for an order enforcing the terms of this Settlement Agreement.

9. The parties agree that any action or proceeding arising out of or in any

way relating to this Agreement, including without limitation any proceeding to enforce the terms of this Agreement, shall be brought exclusively in the United States District Court for the Western District of Washington at Tacoma.

10. In the event that RNA prevails in a motion to enforce the terms of this Settlement Agreement, RNA will be entitled to recover its attorneys' fees and expenses reasonably necessary in connection therewith, including on any appeal or review, as determined by the court.

11. This Agreement and the Court's retention of jurisdiction to enforce the terms of this Agreement will terminate upon the expiration of the five-year time period set forth in Paragraph 2 above.

12. Within ninety (90) days of execution of this Agreement and in accordance with the Stipulated Judgment, EPA will deliver to RNA's attorneys the sum of \$113,000.00 for attorneys' fees. In addition, counsel for the Defendants will deliver to RNA's attorneys the sum of \$2,943.49 for costs. These payments will be made in full settlement of all claims for attorneys' fees and costs that could have been or will be claimed in the Federal Court Action and the Ninth Circuit appeal.

13. The parties agree that Defendants' obligations set forth in Paragraph 2 above are non-precedential and have no impact on Defendants' legal argument that the Court lacks jurisdiction to provide prospective relief under 5 U.S.C. § 706(1). Defendants have not waived the right to assert this legal argument in other cases in the future.

14. With the exception of RNA's right to move the Court for enforcement of the terms of this Agreement, pursuant to Paragraph 8 above, this Agreement, and the obligations incurred herein, including the Stipulated Judgment with declaratory relief, shall be in full and final disposition of the Federal Court Action.

15. This Agreement and its exhibits constitute the entire agreement among the parties hereto concerning the Settlement of the Action, and no representations, warranties, or inducements have been made by any party hereto other than those contained and memorialized in such documents.

16. Each of the individuals signing this Agreement on behalf of a party warrants that he or she has the authority to sign the Agreement and thereby bind the party on whose behalf he or she signs.

17. All parties agree to cooperate fully, carry out this Agreement in good faith,

and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

18. It is contemplated that this Agreement may be executed in counterparts, with a separate signature page for each signatory. All such counterparts and signature pages, together, shall be deemed to be one document.

By the following, Rosemere Neighborhood Association, the United States Environmental Protection Agency, and Administrator Lisa P. Jackson hereby agree to, and are bound by the terms of this Agreement.

SIGNED: _____ DATE: _____

Rosemere Neighborhood Association

By: _____, its

SIGNED: _____ DATE: _____

Christopher Winter

Attorney for Rosemere Neighborhood Association

SIGNED:  _____ DATE: 3/18/2010

Environmental Protection Agency

By: _____, its

Karen D. Higginbotham

Director, Office of Civil Rights

SIGNED: _____ DATE: _____

Rebecca S. Cohen

Assistant United States Attorney

Attorney for EPA and Administrator Jackson

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SIGNED: _____ DATE: _____

Rosemere Neighborhood Association

By: _____, its

SIGNED: _____ DATE: _____

Christopher Winter

Attorney for Rosemere Neighborhood Association

SIGNED: _____ DATE: _____

Environmental Protection Agency

By: _____, its

SIGNED: Rebecca A. Cohen DATE: 3.18.10

Rebecca S. Cohen

Assistant United States Attorney

Attorney for EPA and Administrator Jackson

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SIGNED: _____

DATE: 3-17-10

Rosemere Neighborhood Association

By: Dwight Michael Bertish its
Director, Environment & Conservation

SIGNED: _____

DATE: _____

Christopher Winter
Attorney for Rosemere Neighborhood Association

SIGNED: _____

DATE: _____

Environmental Protection Agency

By: _____, its

SIGNED: _____

DATE: _____

Rebecca S. Cohen
Assistant United States Attorney
Attorney for EPA and Administrator Jackson

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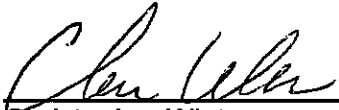
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SIGNED: _____ DATE: _____

Rosemere Neighborhood Association

By: _____, its

SIGNED:  _____ DATE: March 17, 2010
Christopher Winter
Attorney for Rosemere Neighborhood Association

SIGNED: _____ DATE: _____

Environmental Protection Agency

By: _____, its

SIGNED: _____ DATE: _____

Rebecca S. Cohen
Assistant United States Attorney
Attorney for EPA and Administrator Jackson