

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DELAWARE VALLEY TOXICS COALITION : CIVIL ACTION
: :
and : :
: :
PHILADELPHIA AREA PROJECT ON : :
OCCUPATIONAL SAFETY AND HEALTH : :
: :
Plaintiffs, : :
: :
v. : :
: :
KURZ-HASTINGS, INC. : :
: :
Defendant. : NO. 92-CV-5961

SETTLEMENT AGREEMENT AND RELEASE

Intending to be legally bound, this Settlement Agreement and Release ("Agreement") is hereby entered into by and between the Delaware Valley Toxics Coalition and the Philadelphia Area Project on Occupational Safety and Health (collectively referred to as "Plaintiffs") and Kurz-Hastings, Inc.; and

WHEREAS, Plaintiffs commenced this action against Kurz-Hastings in federal court for the Eastern District of Pennsylvania, captioned: Delaware Valley Toxics Coalition and Philadelphia Project on Occupational Safety and Health, Plaintiffs v. Kurz-Hastings, Inc., Civil Action No. 92-CV-5961 (hereinafter "Complaint"); and

WHEREAS the Complaint alleges violations of the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. §11001 et seq. relating to Kurz-Hastings' facility on Dutton Road in Philadelphia; and

WHEREAS, Plaintiffs alleged in the Complaint violations of Sec. 313 of EPCRA and also alleged violations of Sec. 312 of EPCRA in a sixty-day notice letter dated February 17, 1993 (copy attached as Exhibit "A"); and

WHEREAS, Kurz-Hastings denied and continues to deny any and all facts or allegations of EPCRA violations in the Complaint and the sixty-day notice letter;

NOW THEREFORE, without any admission of fault or liability and to avoid further litigation the parties agree to resolve all outstanding disputes among themselves as follows:

1. The Plaintiffs, their officers, agents, employees, and members intending to be legally bound and for good and valuable consideration, agree to forever release Kurz-Hastings, its officers, directors, employees, successors and assigns from any and all claims and demands, actions or causes of actions, whether or not capable of proof, that could have been brought by any of them under EPCRA from the date of EPCRA's enactment to the date this Agreement is executed.

2. (a) For two years from the date of this Agreement, Kurz-Hastings shall forward to Plaintiffs' attorney copies of all EPCRA filings that Kurz-Hastings submits to any state, federal, or local agency pursuant to EPCRA. The submission to Plaintiffs' attorney shall be on the same date as the submission to the governmental agency.

(b) Any document or documents submitted to Plaintiffs' attorney pursuant to this Agreement shall be deemed CONFIDENTIAL,

if Kurz-Hastings has designated the document or document(s) confidential to any public agency. "Confidential" documents shall not be released to any third-parties, nor shall the substance of the contents of such material be disclosed to any third-parties. Submission of a document to Plaintiffs' attorney pursuant to this Agreement shall not be deemed to be a waiver of any claim of confidentiality under federal, state, or local law.

3. No party may disclose any of the terms or conditions of this Agreement, nor may any party provide any written or oral comment upon the settlement other than to report on the fact that the case has settled and that the Complaint has been dismissed with prejudice unless the other parties waive this condition in writing.

4. This Agreement shall be binding upon the Parties, their heirs, successors or assigns.

5. In the event any dispute arises under this Agreement, the Parties shall, upon written notice of one party to the others, meet within thirty (30) days of said notice and in good faith attempt to resolve the dispute. If the Parties are unable to resolve the dispute, the matter shall be referred to Judicate, the national private court system located at 1608 Walnut Street, Philadelphia, Pennsylvania 19103, for binding arbitration.

6. This Agreement may be modified only by a writing signed by duly authorized officers or duly authorized representatives of the Parties hereto.

7. If the performance of any part of this Agreement is prevented, hindered, delayed by reason of strike, flood, riot,

fire, explosion, war or any other casualty or cause beyond the control of such Party, and which cannot be overcome by reasonable diligence and without unusual expense, such Party shall be excused from such performance to the extent that such Party is necessarily prevented, hindered or delayed thereby, during the continuance of any such happening or event and for so long as such event shall continue to prevent, hinder or delay such performance. Such Party's obligation to perform shall be deemed suspended so long as and to the extent that any such Force Majeure Event shall operate to prevent, hinder or delay the performance by such Party of such Party's obligations. Upon the occurrence of any such event the Party whose obligation to perform is suspended shall, as soon as reasonably practicable thereafter, notify the other Party of the nature and extent referred to herein and advise the other Party of the nature and extent thereof.

8. Within five (5) business days of the date of execution of this Agreement, the Plaintiffs shall file with the Clerk of the United States District Court for the Eastern District of Pennsylvania the Agreement and the "Praecipe to Settle, Discontinue and End."

9. Correspondence to counsel relating to any terms and conditions contained in this Settlement Agreement and Release shall be directed, certified mail, return receipt requested, to:

For the Plaintiffs: Jerome Balter, Esquire
Public Interest Law Center
of Philadelphia
125 South 9th Street, Suite 700
Philadelphia, PA 19107

For Kurz-Hastings:

Albert J. Slap, Esquire
Fox, Rothschild, O'Brien & Frankel
2000 Market Street, 10th Floor
Philadelphia, PA 19103

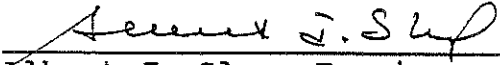
IN WITNESS WHEREOF, the parties have set their hands this

23 day of March, 1993.

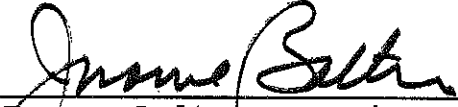
Authorized Representative
of Delaware Valley Toxics
Coalition

Authorized Representative
of Kurz-Hastings, Inc.

Authorized Representative
of Philadelphia Area Project
on Occupational Safety and
Health


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Counsel for Plaintiffs