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California cities and counties announce groundbreaking \$305 million settlement of landmark lead paint litigation

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San Francisco will get about \$21 million to protect children and families from lead paint hazards



SAN FRANCISCO (July 17, 2019) — After nearly 20 years of hard-fought litigation, the County Counsels and City Attorneys of 10 California jurisdictions have reached a settlement on behalf of the People of the State of California that will provide hundreds of millions of dollars to clean up the lead paint that poisons tens of thousands of children across California each year.

Under the settlement agreement, defendants The Sherwin-Williams Company, ConAgra Grocery Products Company, and NL Industries, Inc., will pay \$305 million to the Counties of Santa Clara, Alameda, Los Angeles, Monterey, San Mateo, Solano, and Ventura; the City and County of San Francisco; and the Cities of Oakland and San Diego to address lead paint-related hazards, which to this day continue to be the most significant environmental hazard for children in California and around the country.

The settlement announced today allows the 10 cities and counties to access abatement funds without further delay, ends the threat of further litigation, and gives the cities and counties the flexibility to create more expansive, efficient, and effective clean-up programs tailored to the needs of their communities.

“Lead paint has created a public health crisis for communities in California and across our nation,” said San Francisco City Attorney Dennis Herrera. “This agreement ensures that significant resources will go to address the lead paint crisis and that local governments have the flexibility to best protect children from this pervasive environmental hazard.”

“Today’s settlement holds former manufactures of lead paint responsible for the harm they have caused to generations of California’s children,” said Santa Clara County Counsel James R. Williams. “This settlement is a victory for children and families throughout California. We have fought to hold these companies accountable for nearly twenty years, and will finally have needed funds to devote to protecting our children from lead poisoning.”

The settlement arises out of *County of Santa Clara, et al. v. Atlantic Richfield Company, et al.*, Santa Clara County Superior Court, Case No. 1-00-CV-788657. In 2000, the Santa Clara County Counsel's Office filed this landmark case to hold former lead paint manufacturers responsible for promoting lead paint for use in homes despite their knowledge that the product was highly toxic. San Francisco joined the case in 2001. Young children are especially vulnerable to lead poisoning, the effects of which are irreversible. Although lead paint was banned for residential use in 1978, it is still present in millions of homes in California and continues to be the leading cause of childhood lead poisoning in California.

In 2014, after a six-week trial, the Santa Clara County Superior Court ruled that three former lead paint manufacturers—The Sherwin-Williams Company, ConAgra Grocery Products, and NL—were liable for knowingly marketing a toxic product—lead paint. The court ordered the defendants to provide the funds needed to clean up lead paint inside homes built before 1978 in the ten cities and counties. In 2017, the Court of Appeal upheld the Superior Court's decision, but limited the defendants' liability to clean up homes built before 1951. The California Supreme Court and United States Supreme Court each declined to review the Court of Appeal's precedent-setting decision.

Prior to settlement, the parties were continuing to litigate issues related to the final judgment and the process through which defendants would pay for the lead paint clean-up ordered by the California courts. The court had imposed a time limit of four years on the use of the funds allotted to abatement, after which remaining funds would be returned to the defendants. The court also had restricted expenditure of the funds to certain kinds of remediation projects, excluding homes built after 1950 and areas contaminated by exterior paint, for example.

Today's settlement does away with those restrictions. It gives cities and counties the flexibility to clean up those and other types of lead paint hazards. It also allows the funds to be targeted for intervention services for children with lead poisoning. In addition, it ensures that the cities and counties can use the funds paid by the defendants without the threat that any of the funds will revert back to the defendants.

The 10 cities and counties will divide the settlement funds based on the number of homes with lead paint in each jurisdiction. They will then set up local cleanup programs designed to meet the needs in each city or county. San Francisco is slated to receive about \$21 million for cleanup programs over the next seven years.

The case was litigated on behalf of the People of the State of California by the County Counsels and City Attorneys of the County of Santa Clara, the County of Alameda, the City of Oakland, the City and County of San Francisco, the City of San Diego, the County of Los Angeles, the County of Monterey, the County of San Mateo, the County of Solano, and the County of Ventura. The County Counsel and City Attorney's Offices litigated this case in collaboration with the law firms of Cotchett Pitre & McCarthy LLP, Motley Rice LLC, Mary Alexander & Associates PC, the Law Office of Peter Earle, and Altshuler Berzon LLP.

For more information on the history of the case, please visit www.sccgov.org/leadpaint.

The case is: The case is County of Santa Clara v. Atlantic Richfield Co. et al., Santa Clara Superior Court, case no. 1-00-CV-788657, filed Mar. 23, 2000. Additional case documentation is available on the City Attorney's website at: www.sfcityattorney.org/category/news/lead-paint/.

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