

AMENDMENT TO SETTLEMENT AGREEMENT AMONG THE ENVIRONMENTAL PROTECTION AGENCY, PLAINTIFFS IN CRONIN, ET AL. V. REILLY, 93 CIV. 314 (LTS) (SDNY), AND PLAINTIFFS IN RIVERKEEPER, ET AL. V. EPA, 06 CIV. 12987 (PKC) (SDNY)

WHEREAS, on November 22, 2010, the Environmental Protection Agency (“EPA”) entered into a settlement agreement (the “Settlement Agreement”) with the plaintiffs in two actions previously pending in the United States District Court for the Southern District of New York (collectively, “Riverkeeper”) – *Riverkeeper, et al. v. Jackson*, 93 Civ. 0314 (LTS), and *Riverkeeper, et al. v. EPA*, 06 Civ. 12987 (PKC) – concerning EPA’s issuance of rules implementing section 316(b) of the Clean Water Act (“CWA”), 33 U.S.C. § 1326(b);

WHEREAS, pursuant to Paragraphs 3 and 6(a)(i) of the Settlement Agreement, EPA agreed, *inter alia*, that (i) on or before March 14, 2011, the “EPA Administrator shall sign for publication in the Federal Register a notice of proposed rulemaking implementing section 316(b) of the CWA at existing facilities,” Settlement Agreement ¶ 3; and (ii) on or before August 23, 2011, EPA will notify Riverkeeper, whether the Office of Water “[has] complete[d] a review of the major issues raised by public comments on the proposed rules implementing section 316(b) of the CWA for existing facilities,” *id.* ¶ 6(a)(i);

WHEREAS, EPA has requested, and Riverkeeper has consented, to modify the dates on or before which EPA is to take these actions under Paragraphs 3 and 6(a)(i) of the Settlement Agreement, by extending those dates;

NOW, THEREFORE, EPA and Riverkeeper, intending to be bound by this Amendment to the Settlement Agreement, hereby stipulate and agree as follows:

1. Paragraph 3 of the Settlement Agreement shall be amended to provide:
“No later than March 18, 2011, the EPA Administrator shall sign for publication in the Federal Register a notice of proposed rulemaking implementing section 316(b) of the CWA at existing facilities. The notice of proposed rulemaking shall, among other things, solicit comments on the appropriateness of subjecting the cooling water intake structures at existing facilities to national, categorical performance standards. EPA shall make a copy of the notice available to the Cronin Plaintiffs, the SDNY Phase III Plaintiffs, and the SDNY Phase III Intervenors within five business days following signature.”

2. In the event that, on or before March 18, 2011, the Congress promulgates a continuing resolution providing for the funding of federal government operations from March 19, 2011, to March 28, 2011, or a later date, Paragraphs 3 and 6(a)(i) of the Settlement Agreement shall be further amended as follows:

a. Paragraph 3 of the Settlement Agreement shall provide:
“No later than March 28, 2011, the EPA Administrator shall sign for publication in the Federal Register a notice of proposed rulemaking implementing section 316(b) of the CWA at existing facilities. The notice of proposed rulemaking shall, among other things, solicit comments on the appropriateness of subjecting the cooling water intake structures at existing facilities to national, categorical performance standards. EPA shall make a copy of the notice available to the Cronin Plaintiffs, the SDNY Phase III Plaintiffs, and the SDNY Phase III Intervenors within five business days following signature.”

b. Paragraph 6(a)(i) of the Settlement Agreement shall provide:

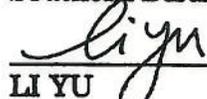
"September 1, 2011 – The Office of Water will complete a review of the major issues raised by public comments on the proposed rules implementing section 316(b) of the CWA for existing facilities;"

3. Within 10 days of the execution of this Amendment, a link to a copy of this Amendment shall be posted on the Office of Water website.

FOR EPA:

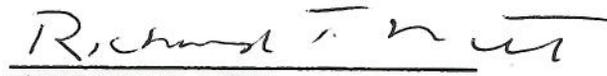
PREET BHARARA
United States Attorney
Southern District of New York

Dated: March 11, 2011



LI YU
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, NY 10007
(212) 637-2734

Dated: March , 2011



RICHARD T. WITT
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

FOR RIVERKEEPER:

Dated: March 11, 2011



REED W. SUPER
Super Law Group, LLC
131 Varick Street, Suite 1001
New York, New York 10013
(212) 242-2273