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**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

FATIGUE TECHNOLOGY,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 19-013

SETTLEMENT AGREEMENT

Respondent, State of Washington, Department of Ecology (Ecology), represented by Robert W. Ferguson, Attorney General, and Nels Johnson, Senior Counsel, and Appellant, Fatigue Technology (Fatigue), appearing pro se, hereby submit this Settlement Agreement (Agreement) to the Pollution Control Hearings Board (Board) as a full and final settlement of the above-referenced appeal, and request that the Board dismiss the appeal with prejudice.

I. BACKGROUND

1. On February 6, 2019, Ecology issued Notice of Penalty Docket No. 16178 (Penalty No. 16178) in the amount of \$17,000 to Fatigue.
2. On March 1, 2019, Fatigue appealed Penalty No. 16178 to the Board.
3. Ecology and Fatigue have agreed to resolve the appeal of Penalty No. 16178 through the settlement outlined below.

1 **II. SETTLEMENT AGREEMENT**

2 The parties desire to resolve the dispute herein and avoid the cost and time associated
3 with further litigation. The parties therefore stipulate and agree as follows:

4 **A. SCOPE**

5 This Agreement constitutes the entire agreement between the parties to this appeal, and
6 settles all issues that were raised or could have been raised by Penalty No. 16178. Ecology agrees
7 to deem Penalty No. 16178 satisfied upon Fatigue's satisfactory and timely completion of its
8 obligations under this Agreement. This Agreement applies only to Penalty No. 16178 issued on
9 February 6, 2019, and does not in any way limit Ecology's authority to issue other penalties or
10 enforcement actions for violations that are not addressed by Penalty No. 16178 except to the
11 extent that such violations could have been raised in Penalty No. 16178.

12 **B. RESOLUTION OF PENALTY**

13 **1. Cash Payment**

14 Fatigue agrees to pay \$12,000 of the \$17,000 penalty to Ecology in cash. Ecology must
15 receive Fatigue's payment of \$12,000 within thirty (30) calendar days of the date the Board
16 dismisses this appeal. If the thirtieth (30th) day falls on a holiday or weekend, payment shall be
17 due on the next business day. Fatigue shall make the payment by check or money order directly
18 payable to "Department of Ecology" and make reference to Penalty No. 16178, and shall send
19 the payment to:

20 Department of Ecology
21 Attn: Cashiering Unit
22 P.O. Box 47611
Olympia, WA 98504-7611

23 If Ecology does not receive Fatigue's payment of \$12,000 within thirty (30) days of the
24 Board's dismissal of this appeal, the full penalty amount of \$17,000 will become immediately
25 due and payable without further right of administrative or judicial review. For purposes of this
26 section, payment is received timely by Ecology if payment is postmarked at least three days prior
to the applicable due date.

1 **2. Remedies**

2 In the event that Fatigue violates the terms of this Agreement, Ecology may pursue all
3 remedies available by law. By entering into this Agreement, Fatigue shall have waived its right
4 of administrative or judicial review on the underlying merits of the Penalty. Either party shall be
5 entitled to recover its costs, including attorney fees, in any action brought to enforce this
6 Agreement in which that party is a prevailing party. Interest shall be charged on any past due
7 payments at twelve percent (12%) per annum pursuant to RCW 43.17.240.

8 **C. VENUE**

9 Fatigue agrees that the venue for any judicial action to enforce this Agreement and/or to
10 collect the Penalty, or any portion thereof, shall be in Thurston County Superior Court.

11 **D. PRESS RELEASES AND OTHER DOCUMENTS**

12 Any document prepared by Fatigue related to this settlement, such as a press release,
13 shall be identified as resulting from a settlement with Ecology.

14 **E. TAX CREDIT DISALLOWED**

15 Fatigue shall not deduct or credit against taxes due or payable any monies paid as cash
16 payments, nor otherwise receive any tax benefits from payment of monies under this Agreement.

17 **F. WAIVER OF APPEAL RIGHTS**

18 Fatigue understands that it has the right to contest Penalty No. 16178 by presenting
19 evidence at a Board hearing. Fatigue voluntarily waives its right to a hearing upon signature and
20 acceptance of this Agreement by representatives for Fatigue and Ecology.

21 **G. RELEASE OF LIABILITY**

22 Fatigue and its heirs, assigns, or other successors in interest, agrees to release and
23 discharge the Department of Ecology and its officers, agents, employees, agencies, and
24 departments from any damages and causes of action of any nature arising out of the incidents
25 that gave rise to Penalty No. 16178 or this appeal.
26

1 | **H. DISMISSAL OF APPEAL**

2 | The parties consent to the submission of this Agreement to the Board and request that,
3 | based upon a full and final settlement having been reached, the Board dismiss this appeal with
4 | prejudice. Both parties further agree to bear their own costs and attorneys' fees associated with
5 | this appeal.

6 | **I. EFFECTIVE DATE**

7 | This Agreement shall become effective upon the date of issuance of the Board's order
8 | dismissing this appeal.

9 | **J. SIGNATORIES AUTHORIZED**

10 | The undersigned representatives for Ecology and Fatigue certify that they are fully
11 | authorized by the party whom they represent to enter into the terms and conditions of this
12 | Agreement and to legally bind such party thereto.

13 | **K. EXECUTION**

14 | This document may be executed in counterparts and may be executed by facsimile, email,
15 | or other means of electronic transmission, and each executed counterpart shall have the same
16 | force and effect as the original instrument.

17 | STATE OF WASHINGTON
18 | DEPARTMENT OF ECOLOGY

19 | *Raman Iyer*
20 | Raman Iyer, Section Manager
21 | Northwest Regional Office
22 | Hazardous Waste & Toxics Reduction Program

23 | Dated: 09/13/19

24 | ROBERT W. FERGUSON
25 | Attorney General

26 | Nels Johnson, WSBA #28616
Senior Counsel
Attorneys for Respondent
360-586-3514

Dated: _____

FATIGUE TECHNOLOGY

Doug Bakken
Doug Bakken, General Manager
Fatigue Technology

Dated: 9/12/19