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6 **POLLUTION CONTROL HEARINGS BOARD**
7 **STATE OF WASHINGTON**

8 KENMORE AIR HARBOR, INC.,

9 Appellant,

10 v.

11 STATE OF WASHINGTON,
12 DEPARTMENT OF ECOLOGY,

13 Respondent.

PCHB No. 17-070

SETTLEMENT AGREEMENT

14
15 Respondent, State of Washington, Department of Ecology (Ecology), represented by
16 Robert W. Ferguson, Attorney General, and Koalani Kaulukukui-Barbee, Assistant Attorney
17 General, and Appellant, Kenmore Air Harbor, Inc. (Kenmore Air Harbor), represented by
18 attorney Lori Terry Gregory, hereby submit this Settlement Agreement (Agreement) to the
19 Pollution Control Hearings Board (Board) as a full and final settlement of the above-
20 referenced appeal, and request that the Board dismiss the appeal with prejudice.

21 **I. BACKGROUND**

22 1. On July 26, 2017, Ecology issued Notice of Penalty Docket No. 14169
23 (Penalty No. 14169) in the amount of \$25,000.00 to Kenmore Air Harbor.

24 2. On August 24, 2017, Kenmore Air Harbor appealed Penalty No. 14169 to the
25 Board.

1 3. Ecology and Kenmore Air Harbor have agreed to resolve the appeal of Penalty
2 No. 14169 through the settlement outlined below.

3 **II. SETTLEMENT AGREEMENT**

4 The parties desire to resolve the dispute herein and avoid the cost and time associated
5 with further litigation, therefore, without admitting liability or fault, the parties stipulate and
6 agree as follows:

7 **A. SCOPE**

8 This Agreement constitutes the entire agreement between the parties to this appeal, and
9 settles all issues raised by Penalty No. 14169. Ecology agrees to deem Penalty No. 14169
10 satisfied upon Kenmore Air Harbor's satisfactory and timely completion of its obligations
11 under this Agreement. This Agreement applies only to Penalty No. 14169 issued on July 26,
12 2017, and does not in any way limit Ecology's authority to issue other penalties or enforcement
13 actions for violations that are not addressed in Penalty No. 14169.

14 **B. RESOLUTION OF PENALTY**

15 **1. Cash Payment**

16 Ecology must receive Kenmore Air Harbor's payment of \$5,000 within 30 calendar
17 days of the date the Board dismisses this appeal. If the 30th day falls on a holiday or weekend,
18 payment shall be due on the next business day. Kenmore Air Harbor shall make the payment
19 by check or money order directly payable to "Department of Ecology" and make reference to
20 Penalty No. 14169, and shall send the payment to:

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

24 If Ecology does not receive Kenmore Air Harbor's payment of \$5,000 within 30 days
25 of the Board's dismissal of this appeal, the full penalty amount of \$25,000 will become
26 immediately due and payable without further right of administrative or judicial review, except
as provided in Paragraph C of this Agreement.

1 **2. Portion of Penalty Held in Abeyance for Two Years**

2 Ecology agrees to hold \$5,000 of the total penalty amount in abeyance for two years
3 from the effective date of this Agreement, on the condition that Kenmore Air Harbor stays in
4 compliance with Washington's Dangerous Waste Regulations (WAC 173-303). If Ecology
5 determines that Kenmore Air Harbor violates the dangerous waste regulations within the two-
6 year period, then the \$5,000 will be due and payable within 30 days from the date Ecology
7 notifies Kenmore Air Harbor of the violation, and Ecology's determination that a violation
8 occurred will not be appealable. If Kenmore Air Harbor does not violate the dangerous waste
9 regulations within two years from the effective date of this Agreement, then the \$5,000 penalty
10 held in abeyance is rescinded.

11 **3. Supplemental Environmental Project (SEP)**

12 In order to satisfy the remainder of the penalty, within 30 calendar days from the date
13 the Board dismisses this appeal, Kenmore Air Harbor will pay \$15,000 to the City of
14 Kenmore for the specific purpose of facilitating the City of Kenmore's implementation of the
15 Integrated Aquatic Vegetation Management Plan. If the 30th day falls on a holiday or
16 weekend, payment shall be due on the next business day. Ecology must receive proof of
17 Kenmore Air Harbor's payment of \$15,000 to the City of Kenmore for implementation of the
18 Integrated Aquatic Vegetation Management Plan within 45 calendar days of the date the
19 Board dismisses this appeal. If the 45th day falls on a holiday or weekend, proof of payment
20 will be due on the next business day. Kenmore Air Harbor will send the proof of payment to:

21 Department of Ecology
22 Hazardous Waste & Toxics Reduction Program
23 3190 160th Avenue SE
24 Bellevue, WA 98008

25 If Kenmore Air Harbor fails to pay \$15,000 to the City of Kenmore for
26 implementation of the Integrated Aquatic Vegetation Management Plan within 30 days of the
Board's dismissal of this appeal, or if the Kenmore Air Harbor fails to provide proof of such
payment to Ecology within 45 days of the Board's dismissal of this appeal, the balance of the

1 \$25,000 penalty not already paid to Ecology will become immediately due and payable to
2 Ecology without further right of administrative or judicial review, except as provided in
3 Paragraph C of this Agreement.

4 **C. REMEDIES**

5 In the event that Kenmore Air Harbor violates the terms of this Agreement, Ecology
6 may pursue all remedies available by law. By entering into this Agreement, Kenmore Air
7 Harbor shall have waived its right of administrative or judicial review on the underlying merits
8 of the Penalty. However, Kenmore Air Harbor does not waive the right to contest whether
9 violations of this Agreement have occurred. Ecology's determination that a dangerous waste
10 violation occurred as provided in Paragraph B.2 of this Agreement will not be appealable.
11 Ecology shall be entitled to recover its costs, including attorney fees, in any action brought to
12 enforce this Agreement in which Ecology is a prevailing party.

13 **D. VENUE**

14 Kenmore Air Harbor agrees that the venue for any judicial action to enforce this
15 Agreement and/or to collect the Penalty, or any portion thereof, shall be in Thurston County
16 Superior Court.

17 **E. PRESS RELEASES AND OTHER DOCUMENTS**

18 Any document prepared by Kenmore Air Harbor related to this settlement, such as a
19 press release, shall be identified as resulting from a settlement with Ecology. In addition, any
20 sum paid to a third party, not a party to this Agreement, as a result of this Agreement, shall be
21 identified as resulting from a settlement with Ecology in any public statement.

22 **F. TAX CREDIT DISALLOWED**

23 Kenmore Air Harbor shall not deduct or credit against taxes due or payable: (a) any
24 monies paid as cash payments, (b) monies utilized for implementation of supplemental
25 environmental projects under this Agreement, or (c) in-kind contributions for supplemental
26 environmental projects under this Agreement, nor otherwise receive any tax benefits from

1 payment of monies as cash payments or for implementation of supplemental environmental
2 projects under this Agreement.

3 **G. WAIVER OF APPEAL RIGHTS**

4 Kenmore Air Harbor understands that it has the right to contest Penalty No. 14169 and
5 by presenting evidence at a Board hearing. Kenmore Air Harbor voluntarily waives its right to
6 a hearing upon signature and acceptance of this Agreement by representatives for Kenmore Air
7 Harbor and Ecology.

8 **H. RELEASE OF LIABILITY**

9 Kenmore Air Harbor and its heirs, assigns, or other successors in interest, agree to
10 release and discharge the Department of Ecology and its officers, agents, employees, agencies
11 and departments from any damages and causes of action of any nature arising out of the
12 incidents that gave rise to this appeal.

13 **I. DISMISSAL OF APPEAL**

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

18 **J. EFFECTIVE DATE**

19 This Agreement shall become effective upon issuance of the Board's order dismissing
20 this appeal.

21 **K. SIGNATORIES AUTHORIZED**

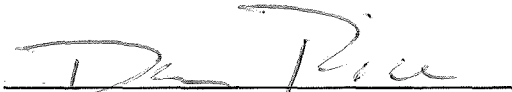
22 The undersigned representatives for Ecology and Kenmore Air Harbor certify that they
23 are fully authorized by the party whom they represent to enter into the terms and conditions of
24 this Agreement and to legally bind such party thereto.
25
26

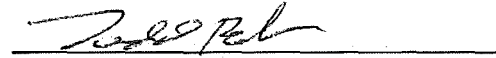
1 **L. EXECUTION**

2 This document may be executed in counterparts and may be executed by facsimile, and
3 each executed counterpart shall have the same force and effect as the original instrument.

4 STATE OF WASHINGTON
5 DEPARTMENT OF ECOLOGY

KENMORE AIR HARBOR, INC.

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7 DARIN RICE
8 Program Manager
9 Hazardous Waste & Toxics Reduction
Northwest Regional Office

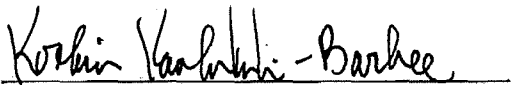
TODD BANKS
President

10 Dated: 12/11/17

Dated: 12/4/17

11 ROBERT W. FERGUSON
12 Attorney General

FOSTER PEPPER, PLLC

13 



14 KOALANI KAULUKUKUI-BARBEE
15 WSBA #50642
16 Assistant Attorney General
17 Attorneys for Respondent
360-586-3513

LORI TERRY GREGORY
WSBA #22066
Attorneys for Appellant
206-447-8902

18 Dated: 12/14/17

Dated: 11/30/2017