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**POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON**

NUMATIC FINISHING  
CORPORATION,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 18-071

SETTLEMENT AGREEMENT

Respondent, State of Washington, Department of Ecology (Ecology), represented by Robert W. Ferguson, Attorney General, and Nels Johnson, Senior Counsel, and Appellants, Numatic Finishing Corporation (Numatic), represented by attorney Brian E. Lawler, 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 September 20, 2018, Ecology issued Notice of Penalty Docket No. 15951 (Penalty No. 15951) in the amount of \$20,000 to Numatic.
2. On October 19, 2018, Numatic appealed Penalty No. 15951 to the Board.
3. Ecology and Numatic have agreed to resolve the appeal of Penalty No. 15951 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. 15951. Ecology agrees  
7 to deem Penalty No. 15951 satisfied upon Numatic’s satisfactory and timely completion of its  
8 obligations under this Agreement. This Agreement applies only to Penalty No. 15951 issued on  
9 September 20, 2018, and does not in any way limit Ecology’s authority to issue other penalties  
10 or enforcement actions for violations that are not addressed by Penalty No. 15951 except to the  
11 extent that such violations could have been raised in Penalty No. 15951.

12 **B. RESOLUTION OF PENALTY**

13 **1. Cash Payment**

14 Numatic agrees to pay \$5,000 of the \$20,000 penalty to Ecology in cash. Ecology must  
15 receive Numatic’s payment of \$5,000 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. Numatic shall make the payment by check or money order directly  
18 payable to “Department of Ecology” and make reference to Penalty No. 15951, and shall send  
19 the payment to:

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

24 If Ecology does not receive Numatic’s payment of \$5,000 within thirty (30) days of the  
25 Board’s dismissal of this appeal, the full penalty amount of \$20,000 will become immediately  
26 due and payable without further right of administrative or judicial review. For purposes of this  
section, payment is received timely by Ecology if payment is postmarked at least three days prior  
to the applicable due date.

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

2           Ecology agrees to hold \$15,000 of the total penalty amount in abeyance for two years  
3 from the effective date of this Agreement, on the condition that Numatic remains in compliance  
4 with specified provisions of Washington’s Dangerous Waste Regulations (WAC 173-303)  
5 during that time. The basis for Penalty No. 15951 was violation of WAC 173-303-070 (waste  
6 designation); WAC 173-303-170(2) and -200(1)(c) (accumulation start date marking);  
7 WAC 173-303-170(2) and -200(1)(d) (hazard labeling); WAC 173-303-200(1)(e) and -340(3)  
8 (aisle space); and WAC 173-303-200(1)(e) and -340(1) (maintain communications and safety  
9 equipment). Ecology has adopted new dangerous waste regulations, which went into effect on  
10 April 28, 2019. The new dangerous waste regulations contain provisions that are substantively  
11 equivalent to the provisions underlying Penalty No. 15951. The penalty in abeyance will be  
12 rescinded, or become due and payable, based on compliance or noncompliance with the specified  
13 substantively equivalent provisions in the new dangerous waste regulations.

14           If Numatic remains in compliance with the following specified provisions of the  
15 dangerous waste regulations for two years from the effective date of this Agreement, then the  
16 \$15,000 penalty amount held in abeyance will be rescinded: (1) WAC 173-303-170(2)(a)(iii)(A)  
17 and by reference WAC 173-303-070 (waste designation); (2) WAC 173-303-200(7)(a)(i) (mark  
18 containers with accumulation start date); (3) WAC 173-303-200(7)(a)(ii) (mark containers as  
19 “dangerous waste” or “hazardous waste”); (4) WAC 173-303-200(7)(a)(iii) (mark containers  
20 with hazard indication); (5) WAC 173-303-201(6) (maintain aisle space); and (6) WAC 173-  
21 303-201(3) (maintain required communication and safety equipment).

22           If Ecology determines that Numatic has failed to comply with any of these provisions  
23 within two years of the effective date of this Agreement, then the \$15,000 held in abeyance will  
24 become due and payable within thirty (30) days from the date Ecology notifies Numatic of the  
25 failures(s) to comply. Ecology’s determination will be based on information in an inspection  
26 report generated after a compliance inspection at the Numatic facility.

1 For purposes of an Ecology determination that Numatic has failed to comply with one or  
2 more of the specified provisions, Numatic's generator category under WAC 173-303-169 will  
3 not be relevant. For purposes of this Agreement, Ecology's determination that Numatic has failed  
4 to comply with a specified provision of the dangerous waste regulations will not be appealable.

5 **C. REMEDIES**

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

12 **D. VENUE**

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

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

16 Any document prepared by Numatic related to this settlement, such as a press release,  
17 shall be identified as resulting from a settlement with Ecology.

18 **F. TAX CREDIT DISALLOWED**

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

21 **G. WAIVER OF APPEAL RIGHTS**

22 Numatic understands that it has the right to contest Penalty No. 15951 by presenting  
23 evidence at a Board hearing. Numatic voluntarily waives its right to a hearing upon signature  
24 and acceptance of this Agreement by representatives for Numatic and Ecology.  
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1 **H. RELEASE OF LIABILITY**

2 Numatic and its heirs, assigns, or other successors in interest, agrees to release and  
3 discharge the Department of Ecology and its officers, agents, employees, agencies and  
4 departments from any damages and causes of action of any nature arising out of the incidents  
5 that gave rise to Penalty No. 15951 or this appeal.

6 **I. NO ADMISSION**

7 The parties acknowledge and agree that they make this Agreement to avoid the cost and  
8 uncertainty of further litigation. The parties agree that neither the existence of this Agreement  
9 nor anything herein shall be construed as, or otherwise used as evidence of, an admission of  
10 fault, liability, or wrongdoing of any kind whatsoever by any party or any party's future, current  
11 or former officers, directors, agents, employees, or representatives.

12 **J. DISMISSAL OF APPEAL**

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

17 **K. EFFECTIVE DATE**

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

20 **L. SIGNATORIES AUTHORIZED**

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

24 //

25 //

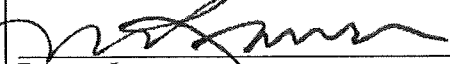
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1 M. EXECUTION

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

5 STATE OF WASHINGTON  
6 DEPARTMENT OF ECOLOGY

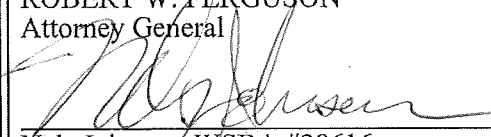
NUMATIC FINISHING CORPORATION

7   
8 Raman Iyer  
9 Section Manager NWRO  
10 Hazardous Waste & Toxics  
11 Reduction Program

David Bailey, President  
Numatic Finishing Corporation

12 Dated: MAY 29, 2019

Dated: \_\_\_\_\_

13 ROBERT W. FERGUSON  
14 Attorney General  
15   
16 Nels Johnson, WSBA #28616  
17 Senior Counsel  
18 Attorneys for Respondent  
19 360-586-3514

JAMES BABBITT STITES &  
LOMBARD, P.L.L.C.  
Brian E. Lawler WSBA #8149  
Attorney for Appellant  
206-292-1995

20 Dated: 6/10/19

Dated: \_\_\_\_\_

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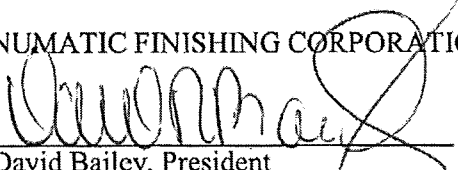
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ROBERT W. FERGUSON  
Attorney General

\_\_\_\_\_  
Nels Johnson, WSBA #28616  
Senior Counsel  
Attorneys for Respondent  
360-586-3514

Dated: \_\_\_\_\_

NUMATIC FINISHING CORPORATION

  
\_\_\_\_\_  
David Bailey, President  
Numatic Finishing Corporation

Dated: 6/7/19

JAMES BABBITT STITES &  
LOMBARD, P.L.L.C.

\_\_\_\_\_  
Brian E. Lawler WSBA #8149  
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16 Nels Johnson, WSBA #28616  
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18 Attorneys for Respondent  
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\_\_\_\_\_   
Brian E. Lawler WSBA #8149  
Attorney for Appellant  
206-292-1995

20 Dated: \_\_\_\_\_

Dated: May 29, 2009

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