NUMATIC FINISHING CORPORATION, Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondent.

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.
II. SETTLEMENT AGREEMENT

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

A. SCOPE

This Agreement constitutes the entire agreement between the parties to this appeal, and settles all issues that were raised or could have been raised by Penalty No. 15951. Ecology agrees to deem Penalty No. 15951 satisfied upon Numatic’s satisfactory and timely completion of its obligations under this Agreement. This Agreement applies only to Penalty No. 15951 issued on September 20, 2018, and does not in any way limit Ecology’s authority to issue other penalties or enforcement actions for violations that are not addressed by Penalty No. 15951 except to the extent that such violations could have been raised in Penalty No. 15951.

B. RESOLUTION OF PENALTY

1. Cash Payment

Numatic agrees to pay $5,000 of the $20,000 penalty to Ecology in cash. Ecology must receive Numatic’s payment of $5,000 within thirty (30) calendar days of the date the Board dismisses this appeal. If the thirtieth (30th) day falls on a holiday or weekend, payment shall be due on the next business day. Numatic shall make the payment by check or money order directly payable to “Department of Ecology” and make reference to Penalty No. 15951, and shall send the payment to:

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

If Ecology does not receive Numatic’s payment of $5,000 within thirty (30) days of the Board’s dismissal of this appeal, the full penalty amount of $20,000 will become immediately 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.
2. Portion of Penalty Held in Abeyance for Two Years

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

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

If Ecology determines that Numatic has failed to comply with any of these provisions within two years of the effective date of this Agreement, then the $15,000 held in abeyance will become due and payable within thirty (30) days from the date Ecology notifies Numatic of the failures(s) to comply. Ecology’s determination will be based on information in an inspection report generated after a compliance inspection at the Numatic facility.
For purposes of an Ecology determination that Numatic has failed to comply with one or more of the specified provisions, Numatic’s generator category under WAC 173-303-169 will not be relevant. For purposes of this Agreement, Ecology’s determination that Numatic has failed to comply with a specified provision of the dangerous waste regulations will not be appealable.

C. REMEDIES

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

D. VENUE

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

E. PRESS RELEASES AND OTHER DOCUMENTS

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

F. TAX CREDIT DISALLOWED

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

G. WAIVER OF APPEAL RIGHTS

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

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

I. NO ADMISSION

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

J. DISMISSAL OF APPEAL

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

K. EFFECTIVE DATE

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

L. SIGNATORIES AUTHORIZED

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

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M. EXECUTION

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Raman Iyer
Section Manager NWRO
Hazardous Waste & Toxics
Reduction Program

Dated: MAY 29, 2019

NUMATIC FINISHING CORPORATION

David Bailey, President
Numatic Finishing Corporation

Dated: ______________________

ROBERT W. FERGUSON
Attorney General

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

Dated: 6/10/19

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

Brian E. Lawler WSBA #8149
Attorney for Appellant
206-292-1995

Dated: ______________________

SETTLEMENT AGREEMENT

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770
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DEPARTMENT OF ECOLOGY

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Section Manager NWRO
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Attorney General

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360-586-3514

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