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

8 **QUIL CEDA TANNING COMPANY,**
9 **INC. and MICHAEL WARDEN,**

10 **Appellants,**

11 **v.**

12 **STATE OF WASHINGTON,**
13 **DEPARTMENT OF ECOLOGY,**

14 **Respondent.**

PCHB No. 16-147

SETTLEMENT AGREEMENT

15 Respondent, State of Washington, Department of Ecology (Ecology), represented by
16 Robert W. Ferguson, Attorney General, and Nels Johnson, Assistant Attorney General, and
17 Appellants, Quil Ceda Tanning Company, Inc., and Michael Warden (collectively "QCT"),
18 represented by attorney John T. Cooke hereby submit this Settlement Agreement (Agreement)
19 to the 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 November 29, 2016, Ecology issued Notice of Penalty Docket No. 13794
23 (Penalty No. 13794) in the amount of \$120,000 to Michael Warden and QCT. The Notice of
24 Penalty was subsequently amended in July 2017 to change regulatory citations.

25 2. On December 27, 2016, QCT appealed Penalty No. 13794 to the Board.
26

1 3. Ecology and QCT have agreed to resolve the appeal of Penalty No. 13794
2 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. The parties therefore stipulate and agree as follows:

6 **A. SCOPE**

7 This Agreement constitutes the entire agreement between the parties to this appeal, and
8 settles all issues that were raised or could have been raised by Penalty No. 13794. Ecology agrees
9 to deem Penalty No. 13794 satisfied upon QCT's satisfactory and timely completion of its
10 obligations under this Agreement. This Agreement applies only to Penalty No. 13794 issued on
11 November 29, 2016, and does not in any way limit Ecology's authority to issue other penalties
12 or enforcement actions for violations that are not addressed by Penalty No. 13794 except to the
13 extent that such violations could have been raised in Penalty No. 13794.

14 **B. RESOLUTION OF PENALTY**

15 QCT agrees to pay, and Ecology agrees to accept, in full settlement of this matter, the
16 sum of \$80,000. QCT agrees to make an initial payment of \$40,000. Ecology must receive
17 QCT's initial payment of \$40,000 within fifteen (15) calendar days of the date the Board
18 dismisses this appeal (Initial Payment). If the fifteenth (15th) day falls on a holiday or weekend,
19 payment shall be due on the next business day. In addition, QCT agrees to make monthly
20 installment payments of \$1,666.66 each month for twenty-four (24) months beginning on the
21 first (1st) day of the first (1st) calendar month following the date on which QCT makes the
22 Initial Payment and continuing for the following consecutive twenty-four (24) calendar months.
23 Ecology must receive each such payment on the first (1st) day of each month. If the first (1st)
24 day of the month falls on a holiday or weekend, payment shall be due on the next business day.
25 QCT shall make the payments by check or money order directly payable to "Department of
26 Ecology" and make reference to Penalty No. 13794, and shall send the payments to:

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

5 If Ecology does not receive QCT's initial payment of \$40,000 within fifteen (15) days of
6 the Board's dismissal of this appeal, the full penalty amount of \$80,000 will become immediately
7 due and payable without further right of administrative or judicial review. If QCT fails to make
8 a monthly installment payment by the fifth (5th) day of the month on which such payment is
9 due, the full amount of the original penalty that remains unpaid as of that date will become
10 immediately due and payable without further right of administrative or judicial review. For
11 purposes of this section, payment is received timely by Ecology if payment is postmarked at
12 least three days prior to the applicable due date.

13 **C. REMEDIES**

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

20 **D. VENUE**

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

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

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

26 **F. TAX CREDIT DISALLOWED**

QCT 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.

1 **G. WAIVER OF APPEAL RIGHTS**

2 QCT understands that it has the right to contest Penalty No. 13794 by presenting
3 evidence at a Board hearing. QCT voluntarily waives its right to a hearing upon signature and
4 acceptance of this Agreement by representatives for QCT and Ecology.

5 **H. MUTUAL RELEASE OF LIABILITY**

6 The parties and their heirs, assigns, or other successors in interest, agree to release and
7 discharge each other and their respective officers, agents, employees, agencies, related entities
8 (including, but not limited to, Matico, LLC), and departments from any damages and causes of
9 action of any nature arising out of the incidents that gave rise to Penalty No. 13794 or this appeal.

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

15 **I. DISMISSAL OF APPEAL**

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

20 **J. EFFECTIVE DATE**

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

23 **K. SIGNATORIES AUTHORIZED**

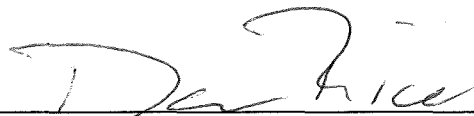
24 The undersigned representatives for Ecology and QCT certify that they are fully
25 authorized by the party whom they represent to enter into the terms and conditions of this
26 Agreement and to legally bind such party thereto.

1 **L. EXECUTION**

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

5 STATE OF WASHINGTON
6 DEPARTMENT OF ECOLOGY

QUIL CEDA TANNING CO., INC.,
and MICHAEL WARDEN

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

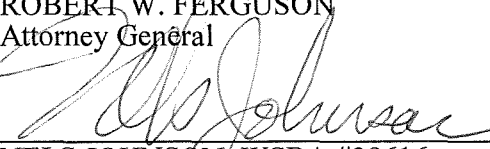
MICHAEL WARDEN
President, Quil Ceda Tanning Co., Inc.

10 Dated: 1/25/18

Dated: _____

11
12 ROBERT W. FERGUSON
13 Attorney General

HOULIHAN LAW PC

14 
15 NELS JOHNSON, WSBA #28616
16 Senior Counsel
Attorneys for Respondent
360-586-3514

JOHN T. COOKE, WSBA #35699
Attorney for Appellants
206-547-1075

17
18 Dated: 1/25/18

Dated: _____

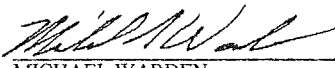
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6 DEPARTMENT OF ECOLOGY

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8 DARIN RICE
9 Program Manager
Hazardous Waste & Toxics Reduction


MICHAEL WARDEN
President, Quil Ceda Tanning Co., Inc.

10 Dated: _____

11 Dated: 1/29/18

12 ROBERT W. FERGUSON
13 Attorney General

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16 Senior Counsel
Attorneys for Respondent
360-586-3514

JOHN T. COOKE, WSBA #35699
Attorney for Appellants
206-547-1075

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18 Dated: _____

Dated: _____

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SETTLEMENT AGREEMENT

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

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6 DEPARTMENT OF ECOLOGY

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8 DARIN RICE
9 Program Manager
Hazardous Waste & Toxics Reduction

MICHAEL WARDEN
President, Quil Ceda Tanning Co., Inc.

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12 ROBERT W. FERGUSON
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16 Senior Counsel
Attorneys for Respondent
360-586-3514


17 JOHN T. COOKE, WSBA #35699
Attorney for Appellants
206-547-1075

18 Dated: _____

Dated: 1-30-2018