POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

SCARSELLA BROTHERS, INC.,  
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 Anne M. Powell, Assistant Attorney General, and Appellant, Scarsella Brothers, Inc. (Scarsella), represented by Jessica L. Scarsella, 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 December 27, 2013, Ecology issued Administrative Order No. 13WRNR–DE 10430\(^1\) and a penalty in the amount of $36,000 (Order and Penalty) to Scarsella.

\(^1\) The Administrative Order, dated December 27, 2013, mistakenly refers to two docket numbers, 13WRNR–DE 10429 and 13WRNR–DE 10430. The correct docket number for the Administrative Order that is the subject of this appeal is 13WRNR–DE 10430.
2. On January 28, 2014, Scarsella appealed the Order and Penalty to the Board.

3. Ecology and Scarsella have agreed to resolve the appeal of the Order and Penalty 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 remaining issues raised by the Order and Penalty. Ecology agrees to deem the Order and Penalty satisfied upon Scarsella’s satisfactory and timely completion of its obligations under this Agreement. This Agreement applies only to the Order and Penalty issued on December 27, 2013, and does not in any way limit Ecology’s authority to issue other penalties or enforcement actions for violations that are not addressed in the Order and Penalty.

B. RESOLUTION OF PENALTY

Ecology and Scarsella agree to settle the $36,000 penalty for $26,400. Satisfaction of the reduced penalty in the amount of $26,400 shall be as follows:

1. Cash Payment

Scarsella shall pay $12,000 to Ecology. Ecology must receive Scarsella’s payment of $12,000 within thirty (30) calendar days of the date the Board dismisses this appeal. If the thirtieth day falls on a holiday or weekend, payment shall be due on the following business day. Scarsella shall make the payment by check or money order directly payable to “Department of Ecology” and make reference to Administrative Order No. 13WRNR–DE 10430 and Penalty, and shall send the payment to:

Department of Ecology
Attn: Cashiering Section
P.O. Box 5128
Lacey, WA 98509-5128
2. Training

In lieu of a monetary payment to Ecology to satisfy $14,400 of the $26,400 reduced penalty, Scarsella agrees to make sixty (60) of its employees available for up to four-hours of training conducted by Ecology. The training will cost Scarsella approximately $14,400 based on an average wage of $60 per hour. The training will occur at a mutually agreeable time within twelve (12) months of the date the Board dismisses the appeal. Training curriculum will include an overview of the Washington Well Construction statute (RCW 18.104) and implementing regulations (WAC 173-160), with an emphasis on well decommissioning. Ecology will contact Jessica Scarsella at (253) 872-7173 of Scarsella to schedule the training, which will take place at location Scarsella chooses to utilize as a training center in the greater Seattle/Tacoma area.

Specifically, the training will be for sixty (60) Scarsella employees that are directly associated with construction work or construction contracts, namely project managers, superintendents, and foremen. Ecology understands that foremen often operate construction equipment and directly supervise and communicate continuously with operators and laborers who are likely to encounter wells during construction. Scarsella shall ensure that the appropriate personnel are present for the training.

Should Scarsella not participate in the training per the terms agreed upon within the one-year time period, the remaining balance of the $36,000 penalty ($24,000) will become immediately due and payable to Ecology without further right of administrative or judicial review, except as provided in Paragraph II. C of this Agreement.

3. Accident Prevention Program Update

Scarsella will incorporate language into its Accident Prevention Program noting that Scarsella is not a licensed well decommissioning firm and include instructions on what Scarsella’s employees should do if they encounter a well while performing work for Scarsella within a one-year time period.
C. REMEDIES

In the event that Scarsella violates the terms of this Agreement, Ecology may pursue all remedies available by law. By entering into this Agreement, Scarsella shall have waived its right of administrative or judicial review on the underlying merits of the Order and Penalty. However, Scarsella does not waive the right to contest whether violations of this Agreement have occurred. Ecology shall be entitled to recover its costs, including attorney fees, in any action brought to enforce this Agreement in which Ecology is a prevailing party.

D. VENUE

Scarsella 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. SERVICE

In the event Ecology pursues any remedy in Thurston County Superior Court, Scarsella agrees to accept service of the summons and complaint by United States mail in lieu of personal service, at Ecology’s option. Service by mail shall be deemed complete upon the third day following the day the summons and complaint are placed in the mail. The current address that Ecology has for Scarsella is P.O. Box 68697, Seattle, Washington, 98168-0697. Appellant agrees to accept service at this address unless Scarsella informs Ecology in writing of any changes to Scarsella’s address.

F. PRESS RELEASES AND OTHER DOCUMENTS

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

G. TAX CREDIT DISALLOWED

Scarsella shall not deduct or credit against taxes due or payable any monies paid as cash payments under this Settlement Agreement, nor otherwise receive any tax benefits from payment of monies as cash payments under this Settlement Agreement.
H. WAIVER OF APPEAL RIGHTS

Scarsella understands that it has the right to contest the Order and Penalty by presenting evidence at a Board hearing. Scarsella voluntarily waives its right to a hearing upon signature and acceptance of this Agreement by representatives for Scarsella and Ecology.

I. RELEASE OF LIABILITY

Scarsella and its heirs, assigns, or other successors in interest, agree 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 this appeal.

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 issuance of the Board’s order dismissing this appeal.

L. SIGNATORIES AUTHORIZED

The undersigned representatives for Ecology and Scarsella 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.
M. EXECUTION

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

ENTERED THIS 30th day of JUNE 2014.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

JERRY LISZAK
Water Resources Section Manager
Northwest Regional Office

Dated: _____________________________

ROBERT W. FERGUSON
Attorney General

ANNE M. POWELL, WSBA #42934
Assistant Attorney General
Attorneys for Respondent
(360) 586-4607

Dated: 8/4/14

SCARSELLA BROTHERS, INC.

FRANK SCARSELLA
President

Dated: 7/30/14

SCARSELLA BROTHERS, INC.

JESSICA SCARSELLA, WSBA #46816
Attorney for Appellant
(206) 872-7173

Dated: 7/30/14
M. EXECUTION

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

ENTERED THIS 4th day of August 2014.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

[Signature]

JERRY LISZAK
Water Resources Section Manager
Northwest Regional Office

Dated: 7/30/2014

SCARSELLA BROTHERS, INC.

FRANK SCARSELLA
President

Dated: ______________________

ROBERT W. FERGUSON
Attorney General

SCARSELLA BROTHERS, INC.

ANNE M. POWELL, WSBA #42934
Assistant Attorney General
Attorneys for Respondent
(360) 586-4607

Dated: ______________________

JESSICA SCARSELLA, WSBA #46816
Attorney for Appellant
(206) 872-7173

Dated: ______________________