



STATE OF WASHINGTON
ENVIRONMENTAL HEARINGS OFFICE

4224 - 6th Ave. SE, Bldg. 2, Rowe Six
PO Box 40903, Lacey, WA 98504-0903

'05 APR -5 10:17

April 1, 2005

DEPT. OF ECOLOGY
3100 N. MOUNTAIN VIEW BLVD.
OLYMPIA, WA 98501

Larry Graf, President
Glacier Bay Catamarans.
14298 169th Dr SE
Monroe WA 98272

Kristie E. Carevich
Assistant Attorney General
Department of Ecology
PO Box 40117
Olympia WA 98504-0117

RE: PCHB NO. 04-065
GLACIER BAY INC. v. ECOLOGY (#1124)

Dear Parties:

Enclosed are the Dismissal Order and Settlement Agreement in this matter.

The Board appreciates the efforts of the parties in resolving this appeal.

Sincerely yours,

Kay Brown
Administrative Appeals Judge, Presiding

KB/jg/P 04-065 ltr

Enc.

Cc: Leann Ryser - Ecology

For the procedural rules of the Board, see WAC 371-08

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid to the attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED April 1, 2005, at Lacey, WA

cc: Enf. Database Coord.

Rev/Rec - Cost Recovery

Victoria Sutton E

orig: File - Fax to ATG

ATG Docket Clerk

Initial: AM



1 BEFORE THE POLLUTION CONTROL HEARINGS BOARD
2 STATE OF WASHINGTON

3 GLACIER BAY, INC.,

4 Appellant,

5 v.

6 DEPARTMENT OF ECOLOGY,

7 Respondent.

PCHB NO. 04-065

DISMISSAL ORDER

8 The Board being having received a settlement in this matter, and it appearing that there is
9 no contested case remaining for hearing, IT IS ORDERED that the case is DISMISSED with
10 prejudice and without fees or costs to either party.

11 DATED this 1st day of April, 2005.

13 POLLUTION CONTROL HEARINGS BOARD

14 William H. Lynch
15 WILLIAM H. LYNCH, Chair

16 Bill Clarke
17 BILL CLARKE, Member

18 David W. Danner
19 DAVID W. DANNER, Member

20 Kay M. Brown
21 Kay M. Brown, Administrative Appeals Judge, Presiding

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**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

GLACIER BAY, INC.,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 04-065

SETTLEMENT AGREEMENT

Respondent, State of Washington, Department of Ecology ("Ecology"), represented by Assistant Attorney General Kristie E. Carevich, and Appellant, Glacier Bay, Inc. ("Glacier Bay"), by and through its President, Larry Graf, hereby submit this Settlement Agreement to the Pollution Control Hearings Board ("Board") as a full and final settlement of the above-referenced appeal, and accordingly request that the Board dismiss the above-referenced appeal.

I. RECITALS

1. On or about April 28, 2004, Ecology issued Notice of Penalty Incurred and Due No. DE 1124 ("Notice of Penalty") to Glacier Bay. The Notice of Penalty assessed a total penalty amount of \$39,000.00 against Glacier Bay for violations of Chapters 70.105 RCW and 173-303 WAC.

1 in violation of Order No. 1123 by failing to satisfactorily perform any or all of the following
2 actions on or before the revised deadlines:

3 a. Within 60 calendar days from the effective date of this Settlement
4 Agreement, provide to Ecology documentation that designation of all solid wastes has
5 occurred. This documentation shall include (but not necessarily be limited to) copies of the
6 analytical results of designation testing and any contracts with testing laboratories or
7 consulting firms.

8 b. Within 60 calendar days from the effective date of this Settlement
9 Agreement, provide Ecology with a list and written description of all wastes generated and
10 products recycled in the business operations. Include all dangerous waste generated on site,
11 wastes treated under the treatment by generator requirements, and any dangerous waste
12 generated by contractors working on site. Describe the process or processes generating
13 hazardous wastes, the method by which the chemicals or materials used become contaminated
14 and no longer useful for their intended purpose, and the steps taken by workers that generate
15 each dangerous waste to properly manage it.

16 c. Within 60 calendar days from the effective date of this Settlement
17 Agreement, submit a written plan documenting the methods to be used to manage each waste
18 stream listed in the waste descriptions. Include a description of the methods to be used to
19 transport, treat, store, label, contain, and dispose of each waste stream.

20 d. Within 10 calendar days from the effective date of this Settlement
21 Agreement, provide Ecology with: a) a written description of the locations of the satellite
22 accumulation areas and the waste streams that will be accumulated in each area; b) a
23 description of how the areas will be managed to comply with the satellite accumulation area
24 regulations; c) a site plan showing the locations of each satellite accumulation area; and d)
25 photographs of each satellite accumulation area showing proper compliance.
26

1 e. Within 10 calendar days from the effective date of this Settlement
2 Agreement, provide Ecology with: a) a written description of the management of hazardous
3 wastes in the 90-day accumulation area according to the requirements of WAC 173-303-200
4 and WAC 173-303-630; b) a site plan showing the location of the area; and c) photographs of
5 the area to document compliance with each of the requirements of section -630.

6 f. Within 10 calendar days from the effective date of this Settlement
7 Agreement, submit a written description of the weekly inspection program for containers of
8 dangerous waste stored in the 90-day hazardous waste accumulation area in accordance with
9 WAC 173-303-200(1)(b) and WAC 173-303-630(6). Assure that the weekly inspection log
10 includes: the date and time of inspection; the printed name and handwritten signature of the
11 inspector; a notation of the observations made; and the date and nature of any corrective
12 measures taken.

13 g. Within 45 calendar days from the effective date of this Settlement
14 Agreement, submit four weeks of completed weekly inspection logs to Ecology for review.

15 h. Within 10 calendar days from the effective date of this Settlement
16 Agreement, plan and document a general facility inspection schedule in accordance with
17 WAC 173-303-320. Develop and follow a written inspection schedule for inspecting all
18 monitoring equipment, safety and emergency equipment, security devices, and operating and
19 structural equipment that help prevent, detect, or respond to hazards to the public health or the
20 environment. The general inspection schedule must adequately identify the types of problems
21 to be examined during general inspections and account for inspection frequency of specific
22 items based on potential equipment deterioration and the probability of an environmental or
23 human health incident. Inspections must be frequent enough to identify and correct problems
24 before they harm human health or the environment. Keep an inspection log or summary for
25 five years after the inspection. Within 10 calendar days from the effective date of this
26

1 Settlement Agreement, submit a written description of the general facility inspections to be
2 conducted and a copy of the implementing paperwork.

3 i. Within 60 calendar days from the effective date of this Settlement
4 Agreement, submit the completed general facility inspection documents to Ecology for review
5 to show compliance with this requirement.

6 j. Within 90 calendar days from the effective date of this Settlement
7 Agreement, submit a written description of the hazardous waste management records to be
8 kept at the facility and the method for storing and retrieving the records per WAC 173-303-
9 210. These records will include but not be limited to waste designation documents, inspection
10 checklists, annual reports, plans, personnel training records, spill/incident reports, and waste
11 disposal records.

12 k. Within 30 calendar days from the effective date of this Settlement
13 Agreement, develop a dangerous waste training program which shall include a written training
14 plan and records per WAC 173-303-330. Training must be conducted by a person
15 knowledgeable in dangerous waste management procedures. This plan shall include a
16 description of the knowledge of the person conducting the training, a list of each position
17 related to dangerous waste management, job title, job description, and name of the employee
18 filling the position. The plan must also include level of training and continuing training
19 required for each position, and a description of the recordkeeping methods to be used to
20 document each employee's training. Submit copies of the written training plan within 30
21 calendar days from the effective date of this Settlement Agreement for Ecology's review,
22 comment, and approval.

23 l. Within 60 calendar days from the effective date of this Settlement
24 Agreement, develop and retain on-site a contingency plan per the requirements of WAC 173-
25 303-350. The contingency plan must meet each of the requirements listed in section -350.
26

1 Submit a copy of the contingency plan within 60 calendar days from the effective date of this
2 Settlement Agreement for Ecology's review, comment, and approval.

3 m. Within 90 calendar days from the effective date of this Settlement
4 Agreement, submit a written description of how compliance will be maintained at the facility
5 including implementation of the findings of the Hazardous Waste Management Report. The
6 following are suggestions for meeting this requirement.

- 7 o Management commitment to compliance
- 8 o Periodic environmental audits
- 9 o Hiring a consultant to maintain compliance
- o Hiring a staff person to manage compliance

10 n. Within 90 calendar days from the effective date of this Settlement
11 Agreement, combine the documentation required by this Order into one Hazardous Waste
12 Management Report and submit the report to Ecology for review and comment.

13 9. RESOLUTION OF PENALTY. In recognition of certain actions taken by
14 Glacier Bay, and of Ecology's and Glacier Bay's desire to avoid the costs of litigation, the full
15 original penalty amount is hereby reduced from \$39,000 to \$30,000. Glacier Bay agrees to
16 satisfy the reduced \$30,000 penalty amount as follows:

17 a. Cash Payment. Within 15 calendar days from the effective date of this
18 Settlement Agreement, Glacier Bay shall make a cash payment in the sum of \$7,800 to
19 Ecology to be deposited in the Hazardous Waste Control and Elimination Account or its
20 successor (RCW 70.105.180). Glacier Bay shall make the cash payment by check directly
21 payable to "Department of Ecology" and make reference to Penalty No. DE 1124, and shall
22 send the payment to:

23 Department of Ecology
24 Attn: Cashiering Section,
25 P.O. Box 5128
26 Lacey, WA 98509-5128

1 Glacier Bay understands and agrees that if it fails to timely pay Ecology the \$7,800 cash
2 payment, that Glacier Bay shall be liable to pay Ecology the full original penalty amount of
3 \$39,000 ("Cash Payment Default"), which will become immediately due and payable.

4 b. Innovative Settlement Payment. In lieu of a monetary payment to
5 Ecology to satisfy the remaining \$22,200 of the \$30,000 reduced penalty, Glacier Bay will
6 reserve and make available a minimum amount of \$22,200 and use such funds to successfully
7 and timely perform all Supplemental Environmental Projects (SEPs) identified in Attachment
8 A, which is hereby incorporated by reference as an integral and enforceable part of this
9 Agreement. Within 45 calendar days of the completion of each SEP, Glacier Bay shall deliver
10 to Ecology a written report describing the work actually performed by the SEP and providing
11 an accounting of funds expended by Glacier Bay for performance of the SEP. Additional
12 reports describing the benefits to human health and the environment resulting from the SEP
13 and the successes and failures encountered are required for some SEPS as specified in
14 Attachment A. Glacier Bay understands and agrees that if it fails to expend at minimum
15 \$22,200 for successful and timely performance of all SEPs in accordance with Attachment A,
16 that Glacier Bay shall pay Ecology that portion of the \$22,200 not utilized to fund the SEPs
17 ("SEP Default amount"). The SEP Default amount shall become immediately due and
18 payable, and payment should be made procedurally in accordance with Paragraph 9(a), above.
19 Ecology may, in the alternative and in its discretion, approve a new and additional SEP to be
20 performed by Glacier Bay, in lieu of requiring any or all of the SEP Default amount as a cash
21 payment.

22 10. ACTION UPON DEFAULT. Glacier Bay further agrees and understands that:
23 (a) Ecology or its assign may pursue all remedies available under Washington law for
24 collection and enforcement of the Cash Payment Default or SEP Default amounts, including,
25 but not limited to, pre and post-judgment interest and attorneys fees and costs; (b) The venue
26 for any judicial action to collect and enforce the Cash Payment Default or SEP Default

1 amounts may be in Thurston County Superior Court; and (c) In any judicial action to collect
 2 and enforce the Cash Payment Default or SEP Default amounts, Glacier Bay shall not be
 3 permitted to litigate the merits of the underlying penalty that is the subject of this Settlement
 4 Agreement. Glacier Bay's liability under this provision shall be reduced by any amounts
 5 already paid to Ecology pursuant to this Agreement.

6 11. STIPULATED PENALTIES FOR FUTURE VIOLATIONS. Ecology shall
 7 have the authority, but not the obligation, to impose stipulated penalties ("Stipulated
 8 Penalties") for violations of the below specified regulatory requirements that occur during the
 9 period beginning 120 calendar days from the effective date of this Settlement Agreement and
 10 ending one and a half (1.5) years from the effective date of this Settlement Agreement (the
 11 "Stipulated Period"), as specified and according to the timetable below:

12 a. PENALTY AMOUNTS FOR SPECIFIC VIOLATIONS:

VIOLATION	FIRST VIOLATION – STIPULATED PERIOD	EACH ADDITIONAL VIOLATION – STIPULATED PERIOD
Failure to designate waste as required by WAC 173-303-170(1)(a)	\$7,000	\$10,000
Lack of or inadequate secondary containment for liquid waste as required by WAC 173-303-200(1)(b) and 173-303-630(7)	\$7,000	\$10,000
Failure to meet satellite accumulation standards as required by WAC 173-303-200(2)	\$7,000	\$10,000
Lack of or inadequate contingency plan as required by WAC 173-303-200(1)(e) and WAC 173-303-350	\$6,000	\$8,000
Lack of or inadequate training program and/or plan as required by WAC 173-303-200(1)(e) and WAC 173-303-330	\$6,000	\$8,000

1 b. REASONABLENESS OF PENALTY AMOUNTS. Glacier Bay agrees
2 that the above Stipulated Penalty amounts are reasonable and appropriate and waives any right
3 to contest the reasonableness and/or appropriateness of any such penalty amount(s), in the
4 event future violations occur during the Stipulated Period and Ecology assesses Stipulated
5 Penalties against Glacier Bay in accordance with this Settlement Agreement. Glacier Bay does
6 not, however, waive the right to contest whether violations have in fact occurred. Ecology, in
7 its discretion, may impose a lower amount of penalties than those Stipulated, or may choose
8 not to impose any penalties in response to such violations.

9 c. NOTICE OF STIPULATED PENALTY. In the event Ecology elects to
10 impose Stipulated Penalties under the terms of this Agreement, it shall provide written notice,
11 by certified mail, to:

12 Larry Graf, President
13 Glacier Bay, Inc.
14 14298 169th Drive SE
15 Monroe, WA 98272

16 Glacier Bay shall pay the penalty assessed within 30 calendar days of receipt by Glacier Bay of
17 the notice of Stipulated Penalty. Payment will be sent to:

18 Department of Ecology
19 Attn: Cashiering Section
20 P.O. Box 5128
21 Lacey, Washington 98509-5128

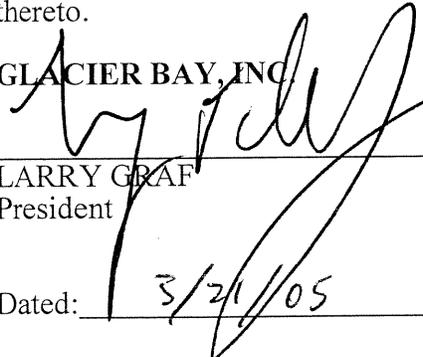
22 12. PRESS RELEASES AND OTHER DOCUMENTS. Any document prepared
23 by Glacier Bay that is related to this settlement, such as a press release, or that is prepared for
24 purposes of implementing this settlement agreement, including but not limited to materials
25 prepared for dissemination as part of SEP #5 in Attachment A, shall be identified as resulting
26 from a settlement with Ecology. In addition, any sum paid to a third party, not a party to this
Agreement, as a result of this Agreement, shall be identified as resulting from a settlement with
Ecology in any public statement.

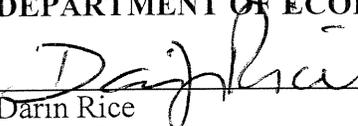
1 13. TAX CREDIT DISALLOWED. Glacier Bay shall not deduct or credit against
2 taxes due or payable any monies paid as cash payments or utilized for implementation of SEPs
3 under this Agreement, nor otherwise receive any tax benefits from payment of monies as cash
4 payments or for implementation of SEPs under this Agreement.

5 14. DISMISSAL OF APPEAL. The parties agree to the dismissal of the pending
6 appeal in *Glacier Bay, Inc. v. Ecology*, PCHB No. 04-065, with prejudice and without costs or
7 attorneys' fees to either party. The parties further consent to the submission of this Settlement
8 Agreement to the Board and request that, based upon a full and final settlement having been
9 reached, the Board dismiss this appeal.

10 15. EFFECTIVE DATE. This Settlement Agreement shall become effective upon
11 the Board's dismissal of this appeal.

12 16. SIGNATORIES AUTHORIZED. The undersigned representatives for Ecology
13 and Glacier Bay certify that they are fully authorized by the party whom they represent to enter
14 into the terms and conditions of this Settlement Agreement and to legally bind such party
15 thereto.

16 **GLACIER BAY, INC.**
17 
18 LARRY GRAF
19 President

DEPARTMENT OF ECOLOGY

Darin Rice
Acting Program Manager
Hzds Waste & Toxics Reduction Program

20 Dated: 3/21/05

Dated: 3/24/05

21 **Presented by:**

22 ROB MCKENNA
23 Attorney General

24 
25 KRISTIE E. CAREVICH, WSBA #28018
26 Assistant Attorney General
Attorneys for Respondent
State of Washington
Department of Ecology

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ATTACHMENT A

SEPs to be Performed by Glacier Bay

Glacier Bay will perform the following SEPs as specified and according to the following timelines:

1. Within 90 calendar days from the effective date of this Settlement Agreement, Glacier Bay will design a boat trailer chock-block product from excess resin and catalyst. The goal of this project is to reduce the generation of hazardous waste resin and catalyst mixtures that currently require treatment by generator and disposal into the solid waste stream. Glacier Bay will:

- Provide information concerning the proposal to make this product to Ecology for approval under the requirements of legitimate recycling and make any modifications needed in order to assure that the product meets the legitimacy test within 15 calendar days from the effective date of this Settlement Agreement.

Upon Ecology's approval of the product as meeting the legitimacy criteria, Glacier Bay will:

- Create the concept drawing
- Prepare a mock-up of part
- Create mold from mock-up part
- Create "one-off" part from mold
- Create multiple glass masters from one-off part
- Make chock-blocks to package with boats that are sold to customers.

1 2. Within 360 calendar days from the effective date of this Settlement Agreement,
2 Glacier Bay will have a unit designed and constructed that will blow excess resin and putty off
3 of tools and collect for reuse, recycle, or proper disposal. The goal of this unit is to greatly
4 reduce the amount of still-bottoms hazardous waste generated since the majority of excess
5 resins and putty will be removed prior to the tool being immersed in acetone for soaking.

6
7 Glacier Bay will:

- 8 • Interview several engineering contractors and investigate their credentials
- 9 • Hold planning meetings to establish project scope and identify constraints
- 10 • Consider initial design from contracted engineer
- 11 • Establish a suitable manufacturer for prototype model
- 12 • Have prototype model fabricated
- 13 • Test and fine-tune prototype
- 14 • Create Operational Procedure (OP) for facility O&M plan
- 15 • Train personnel on use of new equipment

16
17 Within 180 calendar days after implementation, provide a report to Ecology on the
18 benefits to human health and the environment that were or were not achieved and discuss the
19 successes or failures and modifications that may be needed.

20
21
22 3. Within 180 calendar days from the effective date of this Settlement Agreement, Glacier
23 Bay will either hire a consultant or design and implement its own employee education,
24 motivation, and rewards program to give incentives to workers to comply with environmental
25 and safety regulations. The resulting program will have the goal of Glacier Bay employees
26 being more inclined to take an active role in ensuring regulatory compliance for environmental

1 and safety issues. The program must have measurable results, such as number of gallons of
2 waste reduced. Glacier Bay will:

- 3 • Interview several consultants after investigating their credentials, contract the most
4 suitable candidate, if available. If a suitable consultant is not available, and/or Glacier
5 Bay prefers to design and implement its own program, it may do so.
- 6 • If a consultant is hired, direct the consultant to audit the company and prepare a brief of
7 their findings and recommendations.
- 8 • Implement the consultant's or Glacier Bay's own program of recommendations.
- 9 • Within 180 calendar days after implementation, provide a report to Ecology on the
10 benefits to human health and the environment that were or were not achieved and
11 discuss the successes or failures and modifications that may be needed.
12

13
14
15 4. Within 180 calendar days from the effective date of this Settlement Agreement, Glacier
16 Bay will design and provide a dispensing system that, used in conjunction with tabular data,
17 will dispense a small amount of catalyst and resin. The mix proportions will be preset and it
18 will be possible to dial in small or large amounts as needed for the specific magnitude of the
19 work. The system will prevent the generation of excess resin, gelcoat, or basecoat. This will
20 reduce the amount of chemical usage as well as the subsequent generation of 'hotbatch' waste.

21 Glacier Bay will:

- 22 • Purchase one system for dispensing basecoat (the most significant contributor to waste)
- 23 • Perform testing of system to get correct miscibility ratio
- 24 • Generate matrix based on results of testing
- 25 • Determine baseline waste generation and train personnel on equipment usage
26

- 1 • Perform operational testing
- 2 • Calculate rate-based waste reduction
- 3 • If testing warrants, purchase two additional systems within 365 calendar days from the
- 4 effective date of this Agreement.
- 5
- 6 • Within 180 calendar days after implementation, provide a report to Ecology on the
- 7 benefits to human health and the environment that were or were not achieved and
- 8 discuss the successes or failures and modifications that may be needed.
- 9

10 5. On or before December 31, 2005, Glacier Bay will co-host, in conjunction with
11 Ecology, a seminar for Fiberglass Reinforced Plastics (FRP) manufacturers in Washington
12 State. The agenda and mailing list for invitations will be approved by both Ecology and
13 Glacier Bay and will focus on ways to improve compliance and waste reduction efforts.
14 Further, Glacier Bay agrees to discuss its non-compliance during this seminar and will explain
15 to attendees what measures they may take to prevent similar pitfalls. Glacier Bay will:

- 17 • Establish an agreed upon agenda with Ecology.
- 18 • Provide invitational notice to Washington FRP manufacturers as agreed to with
- 19 Ecology.
- 20
- 21 • Create training materials for the seminar and provide a copy to Ecology for approval
- 22 prior to the seminar.
- 23 • Hold the conference.
- 24
- 25
- 26