

Pollution Control Hearings Board
Shorelines Hearings Board
Forest Practices Appeals Board
Hydraulic Appeals Board
Environmental and Land Use Hearings Board



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STATE OF WASHINGTON
ENVIRONMENTAL HEARINGS OFFICE

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

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DEPT. OF ECOLOGY
FISCAL BUDGET

June 9, 2005

Donald Verfurth
CARNEY BADLEY SPELLMAN
700 Fifth Avenue #5800
Seattle WA 98104-5017

Joan Marchioro
Assistant Attorney General
Department of Ecology
PO Box 40117
Olympia WA 98504-0117

RE: PCHB NO. 04-023
SHAKERTOWN 1992, INC. v. ECOLOGY
(DE 03WQSR-5934 & 5935)

Dear Parties:

Enclosed is a Dismissal Order in this matter.

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

Sincerely yours,

Kay M. Brown
Administrative Appeals Judge, Presiding

KMB/P 04-023 ltr.

Cc: Leann Ryser - Ecology
Enc.

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 June 9, 2005 at Lacey, WA

cc: Env. Database Coord.

Rev/Rec Cost Recovery

Marc P. E.

orig: File - Fax to ATG

ATG Docket Clerk

initial: *ME*



BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

SHAKERTOWN 1992, INC.,

Appellant,

v.

DEPARTMENT OF ECOLOGY,

Respondent

PCHB NO. 04-023

DISMISSAL ORDER

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

DATED this 9th day of June, 2005.

POLLUTION CONTROL HEARINGS BOARD

William H. Lynch
WILLIAM H. LYNCH, Chair

Bill Clarke
BILL CLARKE, Member

David W. Danner
DAVID W. DANNER, Member

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

ORDER OF DISMISSAL
PCHB NO. 04-023

(1)

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ENVIRONMENTAL
HEARINGS OFFICE

POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

SHAKERTOWN 1992, INC.,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 04-023

STIPULATION AND AGREED
ORDER OF DISMISSAL

COMES NOW Appellant, SHAKERTOWN 1992, INC., (hereinafter Shakertown), by and through its attorney, Donald Verfurth of the law firm of Carney Badley Spellman, P.S.; and Respondent, State of Washington, Department of Ecology (hereafter Ecology) by and through its attorneys, Rob McKenna, Attorney General, and Joan Marchioro, Senior Counsel, and agree to the entry of this Stipulation and Agreed Order of Dismissal ("Order") as set forth below.

RECITALS

1.1 On June 29, 2001, Ecology issued State Waste Discharge Permit No. ST 3888 to Shakertown for its operations in Winlock, Washington. The permit required

STIPULATION AND AGREED ORDER
OF DISMISSAL

1

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Ecology Division
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ORIGINAL

1 Shakertown to sample discharges from its facility and to submit specific reports
2 regarding its operations.

3
4 1.2 On January 24, 2004, Ecology issued Notice of Penalty Incurred and Due
5 No. DE 03WQSR-5934 to Shakertown, assessing a \$24,000.00 penalty for alleged
6 violations of its State Waste Discharge Permit. On the same date, Ecology issued Order
7 No. DE 03WQSR-5935 to Shakertown, requiring the facility to rectify the
8 noncompliance prompting the penalty.

9
10 1.3 On February 24, 2004, Shakertown timely appealed the penalty and order
11 to the Pollution Control Hearings Board (Board).

12
13 1.4 Shakertown subsequently resolved all of the requirements of the
14 administrative order.

15
16 1.5 In the spirit of compromise and to avoid litigation, the parties wish to
17 settle the outstanding penalty. Therefore, without hearing or adjudication, or admission
18 of any facts or legal authority, the parties stipulate and agree as follows:

19
20 **STIPULATION**

21 2.1 The parties agree to dismiss the above-entitled case on the basis of the
22 terms and conditions set forth below.

23
24 2.2 The parties agree to settle the penalty for \$17,000.00. Shakertown agrees
25 to pay \$8,500.00 to the Winlock Wastewater Treatment plant to be used for the ongoing
26 upgrade of that facility. Payments to Winlock will be made over four (4) months with a

STIPULATION AND AGREED ORDER
OF DISMISSAL

1

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1 first payment of \$2,500.00 due two weeks after the entry of this Stipulation and Agreed
2 Order of dismissal and the remaining payments of \$2,000.00 per month due within four
3 weeks of each preceding installment.
4

5 2.3 Shakertown agrees to pay Ecology \$8,500.00 over nine (9) months in
6 \$1,000.00 installments. The first installment will be made the month following the
7 final payment to Winlock.
8

9 2.4 This stipulated agreement is executed for the sole purpose of settling the
10 appeal as described herein, and it is expressly understood and agreed as a condition
11 hereto that this stipulated agreement shall not constitute or be construed to be an
12 admission of liability. This stipulated agreement is a settlement of disputed facts and
13 law and is entered into without hearing, adjudication, or admission of any fact or
14 allegation. This stipulated agreement shall not constitute evidence or be introduced as
15 evidence for any purpose in any court, administrative hearing, or any other proceedings
16 of any kind.
17
18

19 2.5 The parties agree that they will each bear their own costs and attorneys'
20 fees.
21

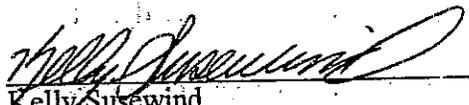
22 2.6 The undersigned representatives for Ecology and Shakertown certify that
23 they are fully authorized by the party whom they represent to enter into the terms and
24 conditions of this Stipulation and Agreed Order of Dismissal and legally to bind such
25
26

1 party thereto. Ecology and Shakertown consent to the submission of this Stipulation
2 and Agreed Order of Dismissal to the PCHB for approval and entry.

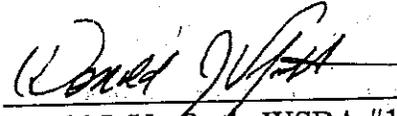
3
4 2.7 Shakertown, its heirs, assigns, or other successors in interest, and Ecology
5 each agree to release and discharge the other and its officers, agents, employees,
6 agencies and departments from all existing and future claims, damages and causes of
7 action of any nature arising out of *Shakertown 1992, Inc. v. Department of Ecology*,
8 PCHB No. 04-023, including all claims for attorneys fees and costs to Shakertown or
9 Ecology.
10

11 STATE OF WASHINGTON
12 DEPARTMENT OF ECOLOGY

CARNEY BADLEY SPELLMAN

13 By: 

14 Kelly Susewind
15 Southwest Regional Manager
16 Water Quality Program

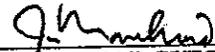
By: 

Donald J. Verfurth, WSBA #15554
Attorneys for Shakertown 1992, Inc.

17 Dated: 5/31/05

Dated: May 26, 2005

18 ROB MCKENNA
19 Attorney General

20 
21 JOAN M. MARCHIORO, WSBA #19250
22 Senior Counsel
23 Attorneys for Respondent
24 State of Washington
25 Department of Ecology
26 (360) 586-6770

Dated: June 2, 2005

STIPULATION AND AGREED ORDER
OF DISMISSAL

1

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Ecology Division
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FAX (360) 586-6760

1 **AGREED ORDER OF DISMISSAL**

2 Having reviewed the foregoing stipulation and the file and pleadings herein, and
3 it appearing that the parties have reached an agreement;

4
5 IT IS HEREBY ORDERED that the foregoing Stipulation be entered as an order
6 of this Board and that this case, *Shakertown 1992, Inc. v. Department of Ecology*, PCHB
7 No. 04-023, is hereby DISMISSED with prejudice and without costs or attorneys fees.

8 SO ORDERED this _____ day of _____, 2005

10 **POLLUTION CONTROL HEARINGS**
11 **BOARD**

12 _____
13 BILL LYNCH, Chair

14 _____
15 BILL CLARKE, Member

16 _____
17 DAVID DANNER, Member

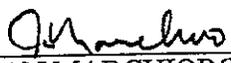
18 Presented by:

Approved as to form, notice of presentation
waived:

19 ROB MCKENNA

CARNEY BADLEY SPELLMAN

20 Attorney General

21 
22 JOAN MARCHIORO, WSBA #19250
23 Senior Counsel
24 State of Washington
25 Department of Ecology
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DONALD J. VEREFURTH, WSBA #15554
Attorneys for Shakertown 1992, Inc.