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**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

SOUND REFINING CORP.,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB NO. 04-099

SETTLEMENT AGREEMENT AND
STIPULATED ORDER OF
DISMISSAL

COMES NOW the appellant Sound Refining Corp., by and through its attorneys, Dianne K. Conway, and Bradley B. Jones, attorneys at law, and the respondent State of Washington, Department of Ecology by and through its attorneys, Christine O. Gregoire, Attorney General, and Nels Johnson, Assistant Attorney General, and move jointly for an order dismissing this appeal and directing the performance of the Settlement Agreement set forth below.

I. STIPULATION

Sound Refining Corp. (SRI) operates a petroleum refining facility in Tacoma Washington. SRI's operations at the facility are governed by National Pollution Discharge Elimination System (NPDES) permit No. WA-000320-4.

1 On June 22, 2004 Ecology issued Notice of Penalty Incurred and Due No. 1219-WQ04
2 (Notice of Penalty) giving notice that Ecology had assessed a penalty against SRI in the
3 amount of \$24,700 pursuant to the provisions of RCW 90.48.140 based on the following
4 Ecology findings:

5 1. During the period July 1, 1999 to June 30, 2003, SRI failed to collect four storm
6 water samples for priority pollutant metals from two of the facility outfalls as
7 required by permit condition S2.A.

8
9 2. During the same period, SRI failed to collect four Human Health Criteria
10 Monitoring samples from two outfalls as required by permit condition S4. SRI did
11 not submit a Human Health Criteria Report prior to January 2, 2004 as also required by
12 Permit Condition S4.

13
14 3. SRI did not submit an application for permit renewal prior to January 2, 2004 as
15 required by permit condition G7.

16
17 On July 21, 2004 SRI filed a Notice of Appeal requesting repeal or reduction of the
18 amount of penalty assessed in the Notice of Penalty.

19
20 **II. SETTLEMENT AGREEMENT**

21 NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and
22 undertakings hereinafter set forth and of the acts performed by Ecology and SRI each for the
23 benefit of the other, Ecology and SRI agree as Follows:

1 1. SCOPE. This agreement constitutes the entire agreement, and settles all issues
2 raised by the Notice of Penalty. Ecology agrees to deem the Notice of Penalty satisfied upon
3 SRI's completion of its obligations under this agreement.

4 2. INNOVATIVE SETTLEMENT PROPOSAL. As an Innovative Settlement
5 Proposal, SRI proposes to complete a Supplemental Environmental Project (SEP) consisting of
6 an Environmental Audit of SRI's Tacoma facility and operations. SRI will contract with an
7 outside consultant or consultants to conduct an audit of its existing regulatory compliance
8 system with the focus on water quality compliance. The consultant(s) will then propose any
9 improvements and conduct a final compliance inspection. The SEP will be completed in the
10 following manner:

11
12 Phase I, Consultant Selection: Within 60 days of the date of entry of this
13 agreement SRI will, subject to Ecology approval, select a consultant or
14 consultants to conduct the environmental audit that will constitute the
15 SEP.

16 Phase II, Initial Audit: The consultant(s) will conduct an inspection of the
17 SRI facility, perform an on-site review of records and interview SRI
18 personnel, review Ecology and City of Tacoma records pertaining to SRI
19 and interview Ecology and City of Tacoma personnel, and conduct other
20 such investigations as shall be necessary. The audit shall include, but not
21 be limited to, a review of regulatory requirements and issues, permit
22 requirements and submittals, recordkeeping, internal staffing levels, staff
23 responsibilities, and the tracking of compliance requirements and
24 submittals. The consultant(s) will prepare an Inspection Report and
25 Recommendations. SRI will provide a copy of the consultant or
26 consultants' Inspection Report and Recommendations to Ecology. SRI

1 will meet with Ecology and the consultant(s) to review the audit results
2 and any proposed changes to SRI's regulatory compliance system. SRI
3 will provide a copy of the consultant or consultants' Inspection Report and
4 Recommendations to Ecology .

5 Phase III: SRI will, with input or assistance from the consultant(s) as
6 needed, implement any system improvements and changes to SRI's
7 regulatory compliance system recommended by the consultant(s), unless
8 SRI demonstrates the Ecology that such changes(s) or improvements
9 would be unreasonable or unduly burdensome. SRI will adopt any
10 recommended changes(s) or improvements that would be necessary to
11 achieve compliance. Phases I through III shall be completed within six
12 months of the date of entry of this agreement unless another timeframe is
13 approved by Ecology.

14 Phase IV, Final Audit: SRI will have one additional audit performed by
15 the consultant(s) to verify that changes have been made and SRI is
16 maintaining compliance. The consultant(s) shall complete this additional
17 audit and produce a Final Audit Report within 12 months after completion
18 of the initial audit. SRI will provide copies of the Final Audit Report to
19 Ecology. The Final Audit Report shall contain a section or sections
20 describing the work actually performed to complete the SEP, the benefits
21 to human health and the environment resulting therefrom, and providing
22 an accounting of funds expended by SRI for the performance of the SEP.
23 SRI shall attach to the report and submit to Ecology documentation of
24 payment for performance of the SEP (e.g. invoices for payments to
25 contractors, canceled checks or acknowledgments of payment) and copies
26 of any contracts for performance of the SEP.

1 3. SATISFACTION OF PENALTY. In lieu of and in full satisfaction of the penalty
2 originally assessed by the Notice of Penalty, SRI shall make a payment in the amount of the
3 \$18,600. Payment shall be made as follows:

4 a. Innovative Settlement Payments. SRI will reserve and make available the amount of
5 \$14,880.00 and pay it to a recipient or recipients for performance of the SEP as set forth in
6 paragraph 2 above.

7 b. Cash payment. SRI shall within 30 days of the execution of this agreement, make a
8 cash payment in the sum of \$3,720.00 by check to: Washington State Department of Ecology,
9 Cashier Section, P.O. Box 5128 Lacey, WA 98519-5128. Reference to penalty number 1219-
10 WQ04 should be made on the check.

11 4. FULL AMOUNT DUE UPON DEFAULT. The full amount of \$18,600, or that
12 portion thereof that has not been utilized to fund the SEP, will become due and payable to
13 Ecology in US funds immediately in the event that SRI fails to perform any obligation under
14 this agreement, and fails to cure such default within 10 business days of written notice of such
15 default. Any portion of \$18,600 that has not been paid to Ecology in cash or paid to a recipient
16 or recipients for performance of the SEP at the completion of Phase IV as described above,
17 shall be immediately due and payable to Ecology.

18 5. DISCOVERY OF NONCOMPLIANCE DURING AUDIT. In the event that
19 noncompliance with permits, laws or regulations is discovered in the course of the
20 Environmental Audit to be performed by SRI as an SEP under the terms of this agreement,
21 Ecology shall apply Ecology Executive Policy 1-26 in determining the appropriate
22 enforcement response, including applicability of penalties.

23 6. TAX BENEFIT. SRI shall not deduct or credit against taxes due or payable the
24 costs of completing the Supplemental Environmental Project (SEP) pursuant to this agreement,
25 nor otherwise receive any tax benefits from fulfilling its obligations under this agreement.
26

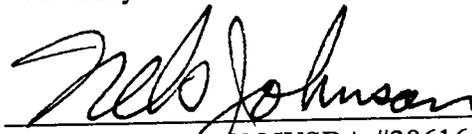
1 7. SIGNATORIES AUTHORIZED. The undersigned representatives for Ecology and
2 SRI certify that they are authorized to enter into the terms and conditions of this Agreement
3 and to legally bind Ecology and SRI hereto.

4 8. BOARD APPROVAL. The parties consent to the submission of this Agreement and
5 Order of Dismissal to the Board for approval and entry.

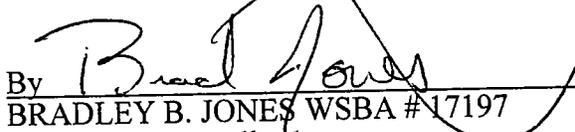
6 RESPECTFULLY SUBMITTED this 22nd day of ~~October~~ ^{December}, 2004.

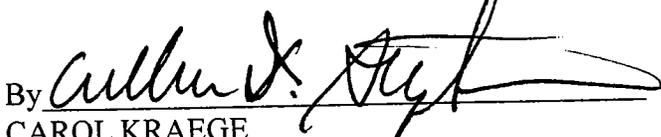
7
8 By 
9 TROY GOODMAN, President
10 SRI
11 Appellants

CHRISTINE O. GREGOIRE
Attorney General


12 NELS JOHNSON WSBA #28616
13 Assistant Attorney General
14 AttorneyS for Respondent

15
16 By 
17 DIANNE K. CONWAY WSBA # 28542
18 Attorney for Appellant

19
20 By 
21 BRADLEY B. JONES WSBA #17197
22 Attorney for Appellant

23
24 By 
25 CAROL KRAEGE
26 Department of Ecology
Hazardous Waste and Toxics Reduction Program

III. AGREED ORDER OF DISMISSAL

Having reviewed the foregoing Settlement Agreement and the file and pleadings
herein, and it appearing that the parties have reached an agreement;

1 IT IS HEREBY ORDERED that the foregoing Settlement Agreement is entered as an
2 order of this Board and the appeal pending before the Board as PCHB No. 04-099 is
3 DISMISSED with prejudice on this date, with each party to bear its own costs and attorneys
4 fees. The notice of penalty No. 1219-WQ04 is satisfied by the terms of the parties' Settlement
5 Agreement. Furthermore, the parties shall abide by and perform the terms of the Settlement
6 Agreement approved by the Board in this matter.

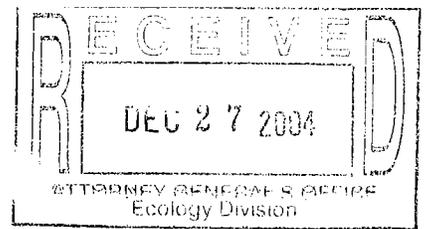
7 SO ORDERED this _____ day of December, 2004.

8
9 POLLUTION CONTROL HEARINGS BOARD

10
11 _____
BILL CLARKE, Presiding Member

12
13 _____
WILLIAM H. LYNCH, Chair

14
15 _____
ROBERT V. JENSEN, Member



BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

SOUND REFINING CORP.,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB NO. 04-099

ORDER OF DISMISSAL

The parties have submitted a Settlement Agreement and Stipulated Order of Dismissal in this matter. Accordingly, there being no contested case,

IT IS ORDERED that the case is DISMISSED.

DONE this 23rd day of December, 2004.

POLLUTION CONTROL HEARINGS BOARD

BILL CLARKE, Presiding

WILLIAM H. LYNCH, Chair

DAVID W. DANNER, Member