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

9 COSMO SPECIALTY FIBERS, INC.,

10 Appellant,

11 v.

12 STATE OF WASHINGTON,
13 DEPARTMENT OF ECOLOGY,

14 Respondent.

PCHB No. 15-140

SETTLEMENT AGREEMENT

15 Respondent, State of Washington, Department of Ecology (Ecology), represented by
16 Robert W. Ferguson, Attorney General and Phyllis J. Barney Assistant Attorney General, and
17 Appellant, Cosmo Specialty Fibers, Inc. (Cosmo), represented by Joseph A. Rehberger and
18 Tanya Barnett, Cascadia Law Group, PLLC, hereby submit this Settlement Agreement to the
19 Pollution Control Hearings Board as a full and final settlement of the above-referenced
20 appeal, and request that the Board dismiss the appeal with prejudice.

21 **I. BACKGROUND**

22 1. On November 12, 2015, Ecology issued National Pollutant Discharge
23 Elimination System Waste Discharge Permit No. WA-0000809 (Permit) to Cosmo. The
24 Permit authorizes the discharge of wastewater from Cosmo's pulp mill.

25 2. On December 11, 2015, Cosmo appealed the Permit to the Board.
26

1 3. Ecology and Cosmo have agreed to resolve the appeal of the Permit through
2 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 resolves all issues raised by Cosmo in its appeal of the Permit. This Agreement applies only to
9 the Permit issued on November 12, 2015 and does not in any way affect Ecology's authority to
10 place different conditions in future permits issued to Cosmo or Cosmo's successors, or
11 Cosmo's right to appeal or other rights related to any future permits issued.

12 **B. RESOLUTION OF APPEAL**

13 1. Cosmo agrees to withdraw **Issue 3** (use of the membrane filtration test method),
14 **Issue 4** (submittal of the TCF analysis), and **Issue 7** (TI/RE Plan update).

15 2. Ecology agrees to make the following modifications to Cosmo's NPDES
16 Permit:

17 **a. Issues 1 and 2 - DOH Shellfish Trigger**

18 Ecology agrees to modify Permit Condition S1.A footnote e to:

19 ^e Discharge of fecal coliform exceeding the Department of Health trigger of 113,000
20 FC/100 mL, daily geomean is considered a permit violation.

21 Ecology agrees to modify Condition S3.F.a to:

22 **a. Immediate Reporting**

23 The Permittee must immediately report to Ecology and the Department of Health,
24 Shellfish Program (at the numbers listed below), all:

- 25 1) Failures of the disinfection system.
26 2) Collection system overflows discharging to marine surface waters.
 3) Plant bypasses discharging to marine surface waters.
 4) Discharge fecal coliform level exceeding the Department of Health criteria for

1 shellfish harvesting.

2 Southwest Regional Office 360-407-6300

3 Department of Health 360-236-3330 (business hours)

4 Shellfish Program 360-789-8962 (after business hours)

5 The Department of Health trigger for closure of downstream shellfish harvesting is
6 113,000 FC/100 mL daily geomean. Exceedance of 113,000 FC/100 mL daily geomean
7 trigger is considered a permit violation.

8 **b. Issue 5 Production Level II limits**

9 Ecology agrees to modify Condition S1.A footnote d to:

10 ^d Production Level II limits for BOD5 and TSS are effective during the calendar month
11 in which: 1) off-the-machine monthly average pulp production is greater than 529.0 air-
12 dried short tons per day; or 2) acetate grade production is fifteen (15) consecutive days
13 or longer; or 3) acetate production is twenty (20) or more non-consecutive days in a
14 calendar month. If the period of continuous acetate production spans two (2) calendar
15 months, Level II will be effective for the month within which the fifteenth (15th) day of
16 acetate run occurs.

17 **c. Issue 6 Monitoring Frequency**

18 Ecology agrees to modify Condition S2.A footnote j to:

19 ^j The Permittee must submit for Ecology's approval a monitoring plan for enterococci
20 within six (6) months of the permit effective date. Ninety (90) days following the
21 approval, the Permittee shall implement the monitoring according to the approval plan.
22 When Grays Harbor County Water Testing Lab is closed and there are no other
23 accredited laboratories to analyze samples within the holding time, monitoring
24 frequency may be less than 4/week for the week, provided the Permittee submits
25 samples on days when the laboratory is available during that week. If Cosmo receives
26 accreditation for and operates an in-house laboratory for sample analysis, the laboratory
must be available as necessary to complete sample analysis on a 4/week schedule.

d. Issue 8 Adequate Capacity Plan

Ecology agrees to modify Permit Condition S11 to delete the requirement for Cosmo to
submit a Plan for Maintaining Adequate Capacity. In place of a Plan for Maintaining Adequate
Capacity, Ecology will now require an Efficiency Study to be submitted within one (1) year
following the completion of the secondary clarifier retrofit/upgrades. The Efficiency Study is
to evaluate the effectiveness of the clarifier retrofit. In accordance with the foregoing, Ecology
agrees to delete the Plan for Maintaining Adequate Capacity from the Summary of Permit

1 Report Submittals in the Permit, and to modify S11 by deleting it, and replacing it with the
2 following:

3
4 **C. Clarifier Efficiency Study**

5 The Permittee must prepare and submit to Ecology an efficiency study to evaluate the
6 clarifier no. 2 performance following the retrofit and its efficient operation. The
7 Permittee must submit the efficiency study no later than October 1, 2018. The study
8 must evaluate the effect of the retrofit in the following areas:

- 9 • Recycle activated sludge (RAS) flow and concentrations.
- 10 • Mix liquor suspended solids (MLSS).
- 11 • Sludge volume index (SVI).
- 12 • Sludge blanket depth.
- 13 • TSS removal efficiency.

14 TSS removal efficiency must be determined from influent and effluent sampling
15 conducted during four (4) separate twenty-four (24) hour composite sampling periods.
16 Two (2) of the sampling periods must be conducted when the effluent plant is primarily
17 processing dry weather flow; the other two (2) periods must be conducted when the
18 effluent plant is primarily processing wet weather flow. Minor precipitation events
19 during dry weather sampling should be recorded if they occur. Each of the two (2) dry
20 weather and wet weather sampling intervals must be spaced at least one (1) month
21 apart. Samples must be collected when the wastewater treatment system is in relatively
22 steady state (no peak flows, upsets, or maintenance turnarounds). The TSS sampling
23 should be timed so that influent sampling events correspond with effluent sampling
24 events in order to effectively estimate removal efficiencies across the system.

25 The efficiency study must also include monthly average and peak flow rates, and
26 calculated rates for clarifier no. 2. The study must evaluate impacts of the flow rates to
ensure efficient removal of TSS.

e. Typographical errors

Ecology agrees to correct the following scrivener's errors:

Condition S1.A:

Change the reference to footnote f next to 2,3,7,8-Tetrachloro-dibenzo-p-dioxin
(TCDD) in the Effluent Limits table to footnote g.

Condition S2.B:

Change the dilution factor for Human Health Criteria-Non-carcinogen to 74.

Condition S2.A:

Change the reference to footnote k next to Absorbable Organic Halides (AOX) in the
Monitoring Schedule table to footnote l.

1 Change the reference to footnote k next to Chemical oxygen demand (COD) in the
2 Monitoring Schedule table to footnote m.

3 Change the reference to footnote m next to 2,3,7,8-TCDD and 2,3,7,8-TCDF in the
4 Monitoring Schedule table to footnote n.

5 Delete duplicate Condition S11 on page 32, nested in Condition S14.

6 Renumber Condition S1.A on page 32 to Condition S14.A

7 **C. PUBLIC NOTICE AND COMMENT**

8 The permit modifications described in Paragraph II.B are of a type subject to public
9 notice and comment requirements. Within ninety (90) days of the Effective Date of this
10 Agreement, Ecology will commence the public notice period for the modifications described in
11 Paragraph II.B. Cosmo understands that Ecology cannot finalize any modifications to the
12 Permit until the close of the public notice and comment period. Cosmo understands that
13 Ecology is obligated by law to consider and, as appropriate, modify the permit in response to
14 the comments. Cosmo further understands that third parties may have the right to appeal
15 modifications to the Permit.

16 **D. WAIVER OF APPEAL RIGHTS**

17 Cosmo understands that it has the right to contest the terms of the Permit by presenting
18 evidence at a Board hearing. Cosmo voluntarily waives its right to a hearing upon signature
19 and acceptance of this Agreement by representatives for Cosmo and Ecology. However, if as a
20 result of comments received through the public comment process, the Permit is modified in
21 ways not provided for in this settlement, Cosmo reserves its right to appeal such permit
22 modifications.

23 **E. RELEASE OF LIABILITY**

24 Cosmo and its heirs, assigns, or other successors in interest, agree to release and
25 discharge Ecology and its officers, agents, employees, agencies, and departments from any
26 damages and causes of action of any nature arising out of the Permit that gave rise to this
appeal.

1 **F. DISMISSAL OF APPEAL**

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

6 **G. EFFECTIVE DATE**

7 This Agreement shall become effective upon issuance of the Board's order dismissing
8 this appeal.

9 **H. SIGNATORIES AUTHORIZED**

10 The undersigned representatives for Ecology and Cosmo certify that they are fully
11 authorized by the party whom they represent to enter into the terms and conditions of this
12 Agreement and to legally bind such party thereto.

13 **I. EXECUTION**

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

16 STATE OF WASHINGTON
17 DEPARTMENT OF ECOLOGY

18 _____
19 James DeMay
20 Industrial Section Manager
21 Waste 2 Resources Program

22 Dated: _____

23 ROBERT W. FERGUSON
24 Attorney General

25 _____
26 Phyllis J. Barney, WSBA# 40678
Assistant Attorney General
Attorneys for Respondent
360-586-4616

Dated: _____

COSMO SPECIALTY FIBERS, INC.

Michael W. Entz
Chief Executive Officer

Dated: 11/17/17

CASCADIA LAW GROUP, PLLC

Joseph A. Rehberger, WSBA# 35556
Tanya Barnett, WSBA# 17491
Attorneys for Appellant
360-786-5057

Dated: 11/21/2017

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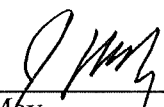
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16 STATE OF WASHINGTON
17 DEPARTMENT OF ECOLOGY

COSMO SPECIALTY FIBERS, INC.

18 
19 James DeMay
Industrial Section Manager
Waste 2 Resources Program

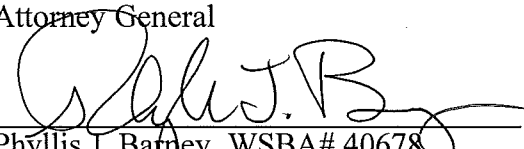
Michael W. Entz
Chief Executive Officer

20 Dated: 11/14/17

Dated: _____

21 ROBERT W. FERGUSON
22 Attorney General

CASCADIA LAW GROUP, PLLC

23 
24 Phyllis J. Barney, WSBA# 40678
25 Assistant Attorney General
Attorneys for Respondent
360-586-4616

Joseph A. Rehberger, WSBA# 35556
Tanya Barnett, WSBA# 17491
Attorneys for Appellant
360-786-5057

26 Dated: 11-22-2017

Dated: _____