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SACRAMENTO COURTS
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

PEOPLE OF THE STATE OF CALIFORNIA, ex rel. Deborah O. Raphael, Director, California Department of Toxic Substances Control,

Plaintiff,

v.

PILKINGTON NORTH AMERICA, INC., a Delaware Corporation,

Defendant.

Case No. 34-2013-00151264

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[PROPOSED] FINAL JUDGMENT ON
CONSENT AND PERMANENT
INJUNCTION PURSUANT TO
STIPULATION

(Code of Civil Procedure § 664.6)

Dept.: 54
Judge: Hon. Raymond M. Cadei
Action Filed: September 10, 2013

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1 Plaintiff the People of the State of California, ex rel. Deborah O. Raphael, Director,
2 California Department of Toxic Substances Control (“DTSC”) and Defendant Pilkington North
3 America (“PNA”), collectively “Parties”, having consented to the entry of this Final Judgment on
4 Consent (“Final Judgment”) prior to the taking of any proof and without a trial or adjudication of
5 any fact or law herein, and

6 The Court having considered the Complaint for Civil Penalties and Injunctive Relief, the
7 Stipulation for Entry of Final Judgment on Consent (the “Stipulation”), and good cause appearing
8 therefore,

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

10 **1. JURISDICTION AND VENUE**

11 Jurisdiction exists over this matter pursuant to Health & Safety Code sections 25181,
12 25189, and 25189.2 and venue in this Court is proper pursuant to the Parties’ Stipulation.

13 **2. APPLICABILITY**

14 The provisions of this Final Judgment and the underlying Stipulation (which is attached
15 hereto as Exhibit A and incorporated by reference), shall apply to and be binding on PNA, its
16 subsidiaries and divisions, its parent companies, its officers and directors, its agents, employees,
17 contractors, consultants, successors, assignees, and representatives, and all persons, partners,
18 corporations and successors thereto, or other entities, acting by, through, under, or on behalf of
19 PNA and upon DTSC and any successor agency of DTSC that may have responsibility for and
20 jurisdiction over the subject matter of this Final Judgment.

21 **3. MONETARY SETTLEMENT REQUIREMENTS**

22 3.1 PNA is liable to DTSC for a total of two hundred and eleven thousand seven hundred
23 and twenty three dollars (\$211,723) in civil penalties, costs and credits to be satisfied as set forth
24 herein.

25 3.1.1 PNA shall pay to DTSC a sum of two hundred and seven thousand seven hundred and
26 twenty three dollars (\$207,723) as the Settlement Payment; of which \$19,748 is reimbursement of
27

1 DTSC's costs and \$187,975 is a civil penalty. Payment of the sum (\$207,723) shall be made
2 within thirty (30) calendar days of entry of this Final Judgment.

3 3.1.2 Four thousand dollars of the amount of \$211,723 shall be credited to PNA pursuant to
4 the provisions of paragraph 3.4 of the Stipulation.

5 3.2 The Settlement Payment required pursuant to the provisions of 3.1.1. shall be made
6 by cashier's check, payable to the "California Department of Toxic Substances Control," and
7 mailed to:

8 Cashier
9 Accounting Office
10 Department of Toxic Substances Control
11 P.O. Box 806
12 Sacramento, CA 95812-0806

13 A copy of the check shall be sent to:

14 Paul Kewin, Chief State Oversight and Enforcement Branch
15 Enforcement and Emergency Response Program
16 Department of Toxic Substances Control
17 8800 Cal Center Drive, MS R1-3
18 Sacramento, CA 95826-3200

19 David A. Zonana
20 Deputy Attorney General
21 Office of the Attorney General
22 1515 Clay Street, 20th Floor
23 Oakland, CA 94612-0550

24 The check for the Settlement Payment of \$207,723 shall bear the name of this case and
25 court number.

26 3.3. PNA shall be and is hereby deemed liable for, and shall pay DTSC, one thousand
27 dollars (\$1,000) per day for the first seven (7) days that the Settlement Payment is late. If the
28 Settlement Payment is more than seven (7) days late, in addition to the late payments for days 1
through 7, PNA shall be and is hereby deemed liable for, and shall pay DTSC, five thousand
dollars (\$5,000) per day for each additional day the Settlement Payment is late.

29 4. INJUNCTION

30 PNA shall be, and is enjoined as follows:

1 **GENERAL INJUNCTIVE PROVISION:**

2 4.1 Pursuant to the provisions of the Health and Safety Code sections 25181 and 25184,
3 PNA shall comply with Chapter 6.5 of Division 20 of the Health and Safety Code (Health & Saf.
4 Code §25100 et seq.) and the regulations promulgated under this chapter (Cal. Code Reg., tit. 22,
5 § 66000 et seq.) at, and in connection with, PNA's operations of the manufacturing facility at 500
6 East Louise Avenue, Lathrop, County of San Joaquin, State of California ("the Lathrop Facility").

7 **SPECIFIC INJUNCTIVE PROVISIONS:**

8 4.2 PNA shall properly and timely dispose of accumulated hazardous waste at the
9 Lathrop Facility as required by California Code of Regulations, Title 22, section 66262.34.

10 4.3 PNA shall properly and timely dispose of accumulated universal waste at the Lathrop
11 Facility as required by California Code of Regulations, Title 22, section 66273.35.

12 4.4 PNA shall maintain and operate the Lathrop Facility to minimize the possibility of
13 unplanned, sudden or non-sudden release of hazardous waste or hazardous waste constituents as
14 required by California Code of Regulations, Title 22, section 66265.31.

15 4.5 PNA shall place any device used to treat aerosol cans containing universal waste on a
16 surface with proper secondary containment, as mandated by Health and Safety Code section
17 25201.16.

18 4.6 PNA shall not dispose of hazardous waste except at an authorized point as provided
19 pursuant to the Hazardous Waste Control Law (HWCL), Health and Safety Code section 25100 *et*
20 *seq.* and PNA shall conduct weekly inspections of all areas of the Lathrop Facility where
21 hazardous waste is generated or accumulated, including an inspection of all municipal waste
22 containers at the Lathrop Facility to inspect for improper management of hazardous waste. PNA
23 shall maintain a written log on-site of the inspections required by California Code of Regulations,
24 tit. 22, section 66265.15. The log shall be furnished upon request, and made available at all
25 reasonable times for inspection, by any officer, employee or representative of DTSC or the local
26 Certified Unified Program Agency ("CUPA"), the San Joaquin Environmental Health
27 Department. The inspections shall, at a minimum, ensure that hazardous waste at the Lathrop
28 Facility is managed in accordance with California Code of Regulations, title 22, sections

1 66265.15, 66265.31, 66262.34, 66273.35, 66265.73, 66265.171, 66265.172, 66265.173,
2 66265.174, 66265.176, and 66265.177. If hazardous waste spills and/or releases are discovered at
3 the Lathrop Facility, PNA shall take appropriate action consistent with the HWCL and will log
4 the type and amount of hazardous waste spilled and/or released.

5 4.7 PNA shall make a waste determination as to the waste generated at the Lathrop
6 Facility, as required by California Code of Regulations, Title 22, sections 66262.11 and
7 66260.200.

8 4.8 PNA shall comply with the employee training requirements for the Lathrop Facility
9 as mandated by California Code of Regulations, Title 22, sections 66265.16 and 66273.36,
10 including but not limited to the training of relevant part-time and contract employees and all
11 managers responsible for Lathrop Facility personnel that may manage or otherwise come in
12 contact with hazardous waste in the scope of their work duties. PNA shall maintain employee
13 training records as required by these regulations.

14 4.9 PNA shall have an up-to-date list in the Lathrop Facility's contingency plan of all
15 persons qualified to act as emergency coordinator as required by California Code of Regulations,
16 Title 22, section 66265.52 and review and amend the contingency plan when the list of
17 emergency coordinators changes as required by California Code of Regulations, Title 22, section
18 66265.54.

19 4.10 PNA shall timely implement the applicable provisions of its contingency plan for the
20 Lathrop Facility when there is a release of hazardous waste or hazardous waste constituents, as
21 mandated by California Code of Regulations, Title 22, section 66265.51.

22 4.11 PNA shall clearly mark containers of hazardous waste at the Lathrop Facility with the
23 date on which accumulation begins and a label with the words "Hazardous Waste" as required by
24 California Code of Regulations, Title 22, section 66262.34.

25 4.12 As mandated by Health and Safety Code section 25201.16, PNA shall submit a
26 notification to the local CUPA, the San Joaquin Environmental Health Department, if it reinitiates
27 the can draining/puncturing device of universal waste aerosol cans.

28

1 4.13 PNA shall refrain from the treatment of hazardous waste at the Lathrop Facility,
2 including used oil, unless the Lathrop Facility obtains a hazardous waste facilities permit or other
3 authorization or grant of conditional authorization or conditional exemption as required by Health
4 and Safety Code section 25201(h).

5 4.14. PNA shall obtain a certificate certifying that any closed tank at the Lathrop Facility
6 has been properly cleaned and shall submit that certificate to the local CUPA, the San Joaquin
7 Environmental Health Department, as required by California Code of Regulations, Title 22,
8 section 67383.3.

9 4.15 At its Lathrop Facility PNA shall clearly label and mark containers and packages
10 containing universal waste lamps or electronic devices with the phrase “Universal Waste --
11 Lamps” or “Universal Waste – Electronic Devices” as applicable and shall manage such items in
12 a way that prevents releases of any universal waste or component of a universal waste to the
13 environment as required by California Code of Regulations, Title 22, sections 66273.33,
14 66273.33.5, 66373.34 and 66273.35.

15 4.16 PNA’s corporate Environmental Health and Safety (“EH&S”) department shall
16 perform the following activities pertaining to the Lathrop Facility: (1) review PNA’s response(s)
17 to notices of violation, inspection reports, self-audits, and any emergency response actions, and
18 ensure that PNA’s responses are timely filed with DTSC and the local CUPA, the San Joaquin
19 Environmental Health Department; (2) conduct a monthly review with the Lathrop Facility
20 representatives including, but not limited to, the Facility manager, of ongoing Facility hazardous
21 waste compliance issues; and (3) maintain and make available to DTSC and the local CUPA, the
22 San Joaquin Environmental Health Department, documentation of all activities required by this
23 paragraph, including an attestation to the truthfulness and accuracy of the information signed by a
24 designated PNA corporate EH&S department representative.

25 4.17 Any officer or employee of PNA promoted, otherwise assuming responsibility for, or
26 oversight of, hazardous waste management at the Lathrop Facility after the entry of the Court’s
27 Final Judgment in this matter, including the Lathrop Facility manager, primary and secondary
28 emergency coordinators and EH&S manager and EH&S technician, must attend and successfully

1 complete Modules I-V relating to hazardous waste at the California Compliance School within six
2 months of their hire, promotion, or assumption of responsibility unless they have attended the
3 California Compliance School and passed the relevant modules within the last five years before
4 the date of their hiring, promotion, or assumption of responsibility. This paragraph only applies
5 to an officer or employee of PNA who is subject to the requirements of California Code of
6 Regulations, Title 22, section 66265.16(d)(1), for the Lathrop Facility.

7 **OTHER PROVISIONS**

8 **5. Retention of Jurisdiction**

9 The Court shall retain jurisdiction of this matter to implement the Final Judgment.

10 **6. Enforcement of Judgment**

11 Any party may, by motion or order to show cause before the Superior Court of Sacramento
12 County, enforce the terms and conditions contained in this Final Judgment. Where a failure to
13 comply with this Final Judgment constitutes future violations of the HWCL, or other laws
14 independent of this Final Judgment, DTSC is not limited to enforcement of this Final Judgment,
15 but may seek in another action, subject to satisfaction of any procedural requirements, fines,
16 costs, fees, penalties, injunctive relief or remedies as provided by law for failure to comply with
17 the HWCL, its implementing regulations, or other laws.

18 **7. Modification**

19 This Final Judgment may be modified by express written agreement of the Parties, with the
20 approval of the Court, or by an order of this Court in accordance with law.

21 **8. Entry of Judgment**

22 The Clerk of the Court is ordered to enter forthwith this Final Judgment, and to provide
23 promptly to the Parties, notice of entry of the Final Judgment.

24 IT IS SO ORDERED, ADJUDGED, AND DECREED.

25 OCT 15 2013

RAYMOND M. CADEI

26 Dated: _____