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California, ex rel. Deborah O. Raphael, Director,
8 *California Department of Toxic Substances Control*

**EXEMPT FROM
FILING FEES
GOVERNMENT CODE § 6103**

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SACRAMENTO

11
12 PEOPLE OF THE STATE OF CALIFORNIA,
13 ex rel. Deborah O. Raphael, Director,
California Department of Toxic Substances
14 Control,
Plaintiff,
15 v.
16 PILKINGTON NORTH AMERICA, INC., a
Delaware Corporation.
17 Defendant.

Case No. 34-2013-00151264

STIPULATION FOR ENTRY OF FINAL
JUDGMENT ON CONSENT

Dept.: 54
Judge: Hon. Raymond M. Cadei
Trial Date: None set
Action Filed: September 10, 2013

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19 This Stipulation for Entry of Final Judgment on Consent (“Stipulation”) is entered into
20 by and between, Plaintiff People of the State of California, ex rel. Deborah O. Raphael,
21 Director, California Department of Toxic Substances Control (“DTSC”) and Defendant
22 Pilkington North America, Inc. (“PNA”). DTSC and PNA, collectively “the Parties,” have
23 agreed to settle this matter without further litigation on the terms set forth below.
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1 **A. JURISDICTION AND VENUE**

2 DTSC and PNA stipulate and agree that for purposes of resolving the matters in the
3 Complaint the Superior Court of the State of California for the County of Sacramento (the
4 “Court”) has subject matter jurisdiction over the matters alleged in the Complaint and personal
5 jurisdiction over the Parties and that venue in this Court is proper.

6 PNA waives its right to a hearing and appeal in this matter.

7 **B. SETTLEMENT OF DISPUTED CLAIMS**

8 DTSC and PNA enter into this Stipulation pursuant to a compromise and settlement of
9 disputed claims for purposes of furthering the public interest. DTSC believes that the resolution
10 embodied in this Stipulation is fair and reasonable and fulfills DTSC’s enforcement objectives;
11 that except as provided in this Stipulation, no further action is warranted concerning the
12 allegations contained in the Complaint; and that entry of the Final Judgment on Consent and
13 Permanent Injunction Pursuant to Stipulation (“Final Judgment”) as provided in this Stipulation
14 is in the best interest of the public. PNA agrees that this Stipulation and the
15 Final Judgment entered thereon, a copy of which is attached as Exhibit A, are a fair and
16 reasonable resolution of the matters alleged in the Complaint.

17 **C. DEFINITIONS**

18 Except where otherwise expressly defined herein, all terms in this Stipulation and Final
19 Judgment shall be interpreted consistent with Chapter 6.5 of Division 20 of the Health and
20 Safety Code and the regulations promulgated under this chapter, Health & Safety Code sections
21 25100 et seq. and Cal. Code of Reg., tit. 22, section 66000 et seq.

- 22 1. “The Lathrop Facility” means the PNA manufacturing facility at 500 East Louise
23 Avenue, Lathrop, in the County of San Joaquin, State of California.
- 24 2. “Hazardous Material,” as used herein, means “hazardous material” as that term is
25 defined in Health and Safety Code section 25501(o).
- 26 3. “Hazardous Waste,” as used herein, shall have the definition as provided for in
27 Health and Safety Code section 25117.

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1 4. "Hazardous Waste Management," and "management" as used herein, shall have the
2 definition as provided for in Health and Safety Code section 25117.2.
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4 **D. CIVIL PENALTIES AND SETTLEMENT PAYMENT**

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

8 **1. SETTLEMENT PAYMENT**

9 a) PNA shall pay to DTSC a sum of two hundred and seven thousand seven hundred
10 and twenty three dollars (\$207,723) as the Settlement Payment; of which \$19,748 is
11 reimbursement of DTSC's costs and \$187,975 is a civil penalty. Payment of the sum (\$207,723)
12 shall be made within thirty (30) calendar days of entry of the Final Judgment in this matter.

13 b) Four thousand dollars of the amount of \$211,723 shall be credited to PNA pursuant
14 to the provisions of paragraph 3.4 herein.

15 c) The payment required pursuant to the provisions of Section D.1.a. shall be made by
16 cashier's check, payable to "the Department of Toxic Substances Control," and mailed to:

17 Cashier
18 Accounting Office
19 Department of Toxic Substances Control
20 P.O. Box 806
21 Sacramento, CA 95812-0806

22 A copy of the check shall be sent to:

23 Paul S. Kewin, Chief
24 State Oversight and Enforcement Branch
25 Enforcement and Emergency Response Program
26 Department of Toxic Substances Control
27 8800 Cal Center Drive, MS R1-3
28 Sacramento, CA 95826-3200

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

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

3 **2. LATE PAYMENTS**

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

9 **E. INJUNCTIVE RELIEF**

10 **1. GENERAL INJUNCTIVE PROVISIONS**

11 PNA shall be, and is enjoined as follows:

12 Pursuant to the provisions of the Health and Safety Code sections 25181 and 25184, PNA
13 shall comply with Chapter 6.5 of Division 20 of the Health and Safety Code (Health & Saf.
14 Code §25100 et seq.) and the regulations promulgated under this chapter (Cal. Code Reg., tit.
15 22, § 66000 et seq.) at, and in connection with, PNA's operations of the Lathrop Facility.

16 **2. SPECIFIC INJUNCTIVE PROVISIONS**

17 2.1 PNA shall properly and timely dispose of accumulated hazardous waste at the
18 Lathrop Facility as required by California Code of Regulations, Title 22, section 66262.34.

19 2.2. PNA shall properly and timely dispose of accumulated universal waste at the
20 Lathrop Facility as required by California Code of Regulations, Title 22, section 66273.35.

21 2.3 PNA shall maintain and operate the Lathrop Facility to minimize the possibility of
22 unplanned, sudden or non-sudden release of hazardous waste or hazardous waste constituents as
23 required by California Code of Regulations, Title 22, section 66265.31.

24 2.4 PNA shall place any device used to treat aerosol cans containing universal waste on
25 a surface with proper secondary containment, as mandated by Health and Safety Code section
26 25201.16.

1 2.5 PNA shall not dispose of hazardous waste except at an authorized point as provided
2 pursuant to the Hazardous Waste Control Law (HWCL), Health and Safety Code section 25100
3 *et seq.* and PNA shall conduct weekly inspections of all areas of the Lathrop Facility where
4 hazardous waste is generated or accumulated, including an inspection of all municipal waste
5 containers at the Lathrop Facility to inspect for improper management of hazardous waste. PNA
6 shall maintain a written log on-site of the inspections required by California Code of
7 Regulations, tit. 22, section 66265.15. The log shall be furnished upon request, and made
8 available at all reasonable times for inspection, by any officer, employee, or representative of
9 DTSC or the local Certified Unified Program Agency (“CUPA”), the San Joaquin
10 Environmental Health Department. The inspections shall, at a minimum, ensure that hazardous
11 waste at the Lathrop Facility is managed in accordance with California Code of Regulations,
12 title 22, sections 66265.15, 66265.31, 66262.34, 66273.35, 66265.73, 66265.171, 66265.172,
13 66265.173, 66265.174, 66265.176, and 66265.177. If hazardous waste spills and/or releases are
14 discovered at the Lathrop Facility, PNA shall take appropriate action consistent with the HWCL
15 and will log the type and amount of hazardous waste spilled and/or released.

16 2.6 PNA shall make a waste determination as to the waste generated at the Lathrop
17 Facility, as required by California Code of Regulations, Title 22, sections 66262.11 and
18 66260.200.

19 2.7 PNA shall comply with the employee training requirements for the Lathrop Facility
20 as mandated by California Code of Regulations, Title 22, sections 66265.16 and 66273.36,
21 including but not limited to the training of relevant part-time and contract employees and all
22 managers responsible for Lathrop Facility personnel that may manage or otherwise come in
23 contact with hazardous waste in the scope of their work duties. PNA shall maintain employee
24 training records as required by these regulations.

25 2.8 PNA shall have an up-to-date list in the Lathrop Facility’s contingency plan of all
26 persons qualified to act as emergency coordinator as required by California Code of
27 Regulations, Title 22, section 66265.52 and review and amend the contingency plan when the
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1 list of emergency coordinators changes as required by California Code of Regulations, Title 22,
2 section 66265.54.

3 2.9 PNA shall timely implement the applicable provisions of its contingency plan for the
4 Lathrop Facility when there is a release of hazardous waste or hazardous waste constituents, as
5 mandated by California Code of Regulations, Title 22, section 66265.51.

6 2.10 PNA shall clearly mark containers of hazardous waste at the Lathrop Facility with
7 the date on which accumulation begins and a label with the words "Hazardous Waste" as
8 required by California Code of Regulations, Title 22, section 66262.34.

9 2.11 As mandated by Health and Safety Code section 25201.16, PNA shall submit a
10 notification to the local CUPA, the San Joaquin Environmental Health Department, if it
11 reinitiates the can draining/puncturing device of universal waste aerosol cans.

12 2.12. PNA shall refrain from the treatment of hazardous waste at the Lathrop Facility,
13 including used oil, unless the Lathrop Facility obtains a hazardous waste facilities permit or
14 other authorization or grant of conditional authorization or conditional exemption as required by
15 Health and Safety Code section 25201(h).

16 2.13. PNA shall obtain a certificate certifying that any closed tank at the Lathrop Facility
17 has been properly cleaned and shall submit that certificate to the local CUPA, the San Joaquin
18 Environmental Health Department, as required by California Code of Regulations, Title 22,
19 section 67383.3.

20 2.14 At its Lathrop Facility, PNA shall clearly label and mark containers and packages
21 containing universal waste lamps or electronic devices with the phrase "Universal Waste --
22 Lamps" or "Universal Waste – Electronic Devices" as applicable and shall manage such items in
23 a way that prevents releases of any universal waste or component of a universal waste to the
24 environment as required by California Code of Regulations, Title 22, sections 66273.33,
25 66273.33.5, 66373.34 and 66273.35.

26 2.15 PNA's corporate Environmental Health and Safety ("EH&S") department shall
27 perform the following activities pertaining to the Lathrop Facility: (1) review PNA's response(s)
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1 to notices of violation, inspection reports, self-audits, and any emergency response actions, and
2 ensure that PNA's responses are timely filed with DTSC and the local CUPA, the San Joaquin
3 Environmental Health Department; (2) conduct a monthly review with the Lathrop Facility
4 representatives including, but not limited to, the Facility manager, of ongoing Facility hazardous
5 waste compliance issues; and (3) maintain and make available to DTSC and the local CUPA, the
6 San Joaquin Environmental Health Department, documentation of all activities required by this
7 paragraph, including an attestation to the truthfulness and accuracy of the information signed by
8 a designated PNA corporate EH&S department representative.

9 2.16 Any officer or employee of PNA promoted, otherwise assuming responsibility for,
10 or oversight of, hazardous waste management at the Lathrop Facility after the entry of the
11 Court's Final Judgment in this matter, including the Lathrop Facility manager, primary and
12 secondary emergency coordinators and EH&S manager and EH&S technician, must attend and
13 successfully complete Modules I-V relating to hazardous waste at the California Compliance
14 School within six months of their hire, promotion, or assumption of responsibility unless they
15 have attended the California Compliance School and passed the relevant modules within the last
16 five years before the date of their hiring, promotion, or assumption of responsibility. This
17 paragraph only applies to an officer or employee of PNA who is subject to the requirements of
18 California Code of Regulations, Title 22, section 66265.16(d)(1) for the Lathrop Facility.
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20 **3. ENVIRONMENTAL COMPLIANCE SCHOOL**

21 3.1 As of the entry of the Final Judgment all officers, managers, and emergency
22 coordinators responsible for training or supervising Lathrop Facility personnel with responsibility
23 for hazardous waste management at the Lathrop Facility have attended and successfully
24 completed Modules I-V relating to hazardous waste at the California Compliance School. This
25 included the Lathrop Facility's plant manager, and the Lathrop Facility's primary and secondary
26 emergency coordinators, and the Lathrop Facility's EH&S manager and EH&S technician
27 (understanding that the latter two persons may be designated as the Lathrop Facility's emergency
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1 coordinators). PNA has submitted documentation to DTSC showing compliance with this
2 paragraph as of January 2013.

3 3.2 PNA has provided DTSC with a list with of the names of the four employees,
4 including those covered by paragraph 3.1 above, who have completed the relevant California
5 Compliance School modules and DTSC has received certificates of Satisfactory Completion for
6 those employees. Accordingly, DTSC has agreed to credit PNA \$4,000, asset forth in Section
7 D.1.

8 **F. ENFORCEMENT OF FINAL JUDGMENT**

9 1. DTSC has the right to enforce the Final Judgment as provided herein and pursuant to
10 applicable law.

11 2. Before pursuing any action to enforce any of the terms of the Final Judgment,
12 DTSC shall meet and confer with PNA in a good faith attempt to resolve the issue without
13 judicial intervention. To ensure that the meet and confer process is as productive as possible,
14 DTSC will identify, at least ten (10) days in advance of the meet and confer, as specifically as
15 the available information allows, the grounds for its enforcement action, the actions that DTSC
16 believe PNA must take to remedy its non-compliance, and the specific relief, if any, sought by
17 DTSC.

18 3. PNA reserves all rights to oppose any motion brought by DTSC to enforce any
19 provisions of the Final Judgment.

20 4. Nothing in this Stipulation is intended to or shall be construed to limit DTSC's exercise of
21 its regulatory authority or to take additional enforcement action.

22 **G. EFFECT OF FINAL JUDGMENT**

23 Other than "Covered Matters" as defined in Paragraph H.1. below, nothing herein is
24 intended, nor shall it be construed, to preclude DTSC, or any state, county, or local agency,
25 department, board, or entity from exercising its authority under any law, statute, or regulation.

26 **H. MATTERS COVERED AND RESERVED CLAIMS**

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1. This Stipulation and the Final Judgment entered in this matter is a final and binding resolution and settlement of all claims, violations, and causes of action specifically alleged by DTSC against PNA in the Complaint. The matters described in the previous sentence are “Covered Matters.” DTSC reserves the right to pursue any claim, violation, or cause of action that is not a Covered Matter (“Reserved Claims”). Claims, violations, or causes of action against independent contractors of PNA, if any, are not resolved by this Final Judgment.

2. Any claims, violations, or causes of action that are not alleged in the Complaint against PNA, including, but not limited to, any alleged violations that occurred after June 8, 2012, are not resolved, settled, or covered by this Final Judgment.

3. Notwithstanding any other provision of this Final Judgment, Reserved Claims include, but are not limited to, any claims or causes of action for: a) performance of corrective action, response action, or recovery of costs of actions, concerning or arising out of actual past or future releases, spills, leaks, discharges, or disposal of hazardous materials, hazardous wastes, and/or hazardous substances; and b) claims or causes of action relating to the investigation and clean up of the disposal of hazardous materials, hazardous wastes, and/or hazardous substances, by PNA.

4. In any subsequent action that may be brought in the name of DTSC based on any Reserved Claims, PNA agrees that it will not assert that the failure to pursue the Reserved Claims as part of this action constitutes claim-splitting or laches or is otherwise inequitable because of this asserted failure. This Paragraph does not bar PNA from asserting any statute of limitations that may be applicable to any Reserved Claims or any other defense.

5. PNA covenants not to pursue any civil or administrative claims against DTSC or against any governmental unit of the State of California, any counties or municipalities in the State of California, or against their officers, employees, representatives, agents, or attorneys for actions taken against PNA arising out of or related to Covered Matters.

I. NOTICE

1. All submissions and notices required by this Stipulation shall be sent to:

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a. For Plaintiff:

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

With a copy to:

Sonia Feldstein
Office of Legal Counsel
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, CA 94710

David Zonana
Deputy Attorney General
California Department of Justice
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

b. For PNA :

Alan Graham, General Counsel
Pilkington North America, Inc.
811 Madison Ave.
Toledo, OH 43695
(419) 247-3475 (fax)
alan.graham@nsg.com

With a copy to:

Kurt Kissling
Pepper Hamilton LLP
4000 Town Center, Suite #1800
Southfield, MI 48075-1505
(248) 359-7700 (fax)
kisslink@pepperlaw.com

Any party may change its notice and name and address by informing the other parties in writing by certified mail. The change shall be effective upon receipt of the certified mail.

2. All notices and communications required or permitted under the Final Judgment that are properly addressed as provided in this section are effective upon delivery if delivered personally or by overnight delivery, or are effective five (5) days following deposit in the United

1 States mail, postage prepaid, if delivered by mail, or are effective the next court day that
2 electronic mail is sent before 5 p.m. (PST) to the electronic mail addresses of the designated
3 recipient for notice concurrent with sending the notice by United States mail.

4 **J. NECESSITY FOR WRITTEN APPROVALS**

5 All notices, approvals, and decisions of DTSC under the terms of this Stipulation or the
6 Final Judgment shall be communicated to PNA in writing. No oral advice, guidance, suggestions,
7 or comments by employees or officials of DTSC regarding submissions or notices shall be
8 construed to relieve PNA of its obligations to obtain any final written approval required by this
9 Stipulation or the Final Judgment.

10 **K. NO LIABILITY OF DTSC**

11 DTSC shall not be liable for any injury or damage to persons or property resulting from
12 acts or omissions by PNA or their respective officers, directors, employees, agents,
13 representatives, contractors, successors, or assigns, in carrying out activities pursuant to the Final
14 Judgment, nor shall DTSC be held as a party to or guarantor of any contract entered into by PNA
15 or their respective officers, directors, employees, agents, representatives, contractors, successors,
16 or assigns, in carrying out the requirements of this Stipulation or the Final Judgment.

17 **L. NO WAIVER OF RIGHT TO ENFORCE**

18 The failure of DTSC to enforce any provision of this Stipulation or the Final Judgment
19 shall neither be deemed a waiver of such provision, nor in any way affect the validity of this
20 Stipulation or the Final Judgment. The failure of DTSC to enforce any such provision shall not
21 preclude it from later enforcing the same or other provisions of this Stipulation or the Final
22 Judgment or taking a separate action against PNA. No oral advice, guidance, suggestions, or
23 comments by employees or officials of DTSC or PNA, or people or entities acting on behalf of
24 PNA, regarding matters covered in this Stipulation or the Final Judgment shall be construed to
25 relieve PNA of its obligations under this Stipulation or the Final Judgment.

26 **M. FUTURE REGULATORY CHANGES**

1 Nothing in this Stipulation or the Final Judgment shall excuse PNA from meeting any
2 more stringent requirements that may be imposed by changes in applicable law.

3 **N. APPLICATION OF FINAL JUDGMENT**

4 This Stipulation and the Final Judgment shall apply to and be binding upon DTSC and
5 upon PNA, and upon its officers, managers, employees, agents, contractors, successors, and
6 assigns.

7 **O. AUTHORITY TO ENTER INTO STIPULATION**

8 Each signatory to this Stipulation certifies that he or she is fully authorized by the party he
9 or she represents to enter into this Stipulation, to execute it on behalf of the party represented, and
10 to legally bind that party.

11 **P. CONTINUING JURISDICTION**

12 The Parties agree that this Court has continuing jurisdiction to interpret and enforce this
13 Stipulation and the Final Judgment. The Court shall retain continuing jurisdiction to enforce the
14 terms of this Stipulation and the Final Judgment and to address any other matters arising out of or
15 regarding this Stipulation and the Final Judgment.

16 **Q. ABILITY TO INSPECT AND COPY RECORDS AND DOCUMENTS**

17 PNA shall permit any duly authorized representative of DTSC to inspect and copy PNA's
18 records and documents to determine whether PNA is in compliance with the terms of this
19 Stipulation and the Final Judgment. Nothing in this Paragraph is intended to require access to or
20 production of any privileged documents.

21 **R. INTERPRETATION OF STIPULATION AND FINAL JUDGMENT**

22 This Stipulation and the Final Judgment were drafted equally by the signatories hereto.
23 The signatories agree that the rule of construction holding that ambiguity is construed against the
24 drafting party shall not apply to the interpretation of this Stipulation and the Final Judgment.

25 **S. COUNTERPART SIGNATURES**

26 This Stipulation may be executed in counterpart signatures.

27 **T. INTEGRATION**

1 This Stipulation and the Final Judgment constitutes the entire agreement between DTSC
2 and PNA with respect to the matters specifically alleged in the Complaint and may not be
3 amended or supplemented except as provided for in this Stipulation or the Final Judgment.

4 **U. MODIFICATION OF FINAL JUDGMENT**

5 The Final Judgment may be modified by express written agreement of the Parties, with the
6 approval of the Court, or by an order of the Court in accordance with law.

7 **V. COSTS AND ATTORNEYS' FEES**

8 Each Party to this Stipulation and Final Judgment shall bear its own costs and
9 attorneys' fees.

10 **IT IS SO STIPULATED**

11 **Plaintiff, PEOPLE OF THE STATE OF CALIFORNIA,**
12 **ex rel. Deborah O. Raphael, Director,**
13 **California Department of Toxic Substances Control**

14 Dated: August 30, 2013

15 Original signed by Paul Kewin

16 By: _____
17 Paul Kewin, Chief, *Enforcement and Emergency Response*
18 ~~State Oversight and Enforcement Branch~~ *Division*
19 Plaintiff People of the State of California, ex rel.
20 Deborah O. Raphael, Director, California
21 Department of Toxic Substances Control

22 **PILKINGTON NORTH AMERICA, INC.**

23 Dated: August 23, 2013

24 Original signed by Alan Graham

25 By: _____
26 Alan Graham
27 General Counsel
28 Pilkington North America, Inc.

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Approved as to form by:

Dated: August 24, 2013

KAMALA D. HARRIS
Attorney General of California
MARGARITA PADILLA
Supervising Deputy Attorney General

Original signed by David A. Zonana

DAVID A. ZONANA
Deputy Attorney General
*Attorneys for Plaintiff People of the State of
California, ex rel. Deborah O. Raphael,
Director, California Department of Toxic
Substances Control*

Dated: August 23, 2013

PEPPER HAMILTON LLP

Original signed by Jeffrey M. Goldman

JEFFREY M. GOLDMAN
*Attorneys for Defendant Pilkington North
America, Inc.*

EXHIBIT A

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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

[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

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.

4. INJUNCTION

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
26 Dated: _____
27
28