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11 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **FOR MARICOPA COUNTY**

13 **STATE OF ARIZONA, ex rel.,**
14 **STEPHEN A. OWENS, Director,**
15 **Arizona Department of**
16 **Environmental Quality,**

17 Plaintiffs,

18 vs.

19 **NORTH AMERICAN SLEEK**
20 **CRAFT, INC., an Arizona Corporation,**

21 Defendant.

Civil Action No. _____

22 **CONSENT JUDGMENT**

(Non-classified Civil)

23 **I. RECITALS**

24 A. The Plaintiff, State of Arizona, ex rel., Stephen A. Owens, Director, Arizona
Department of Environmental Quality (“State”), filed a Complaint alleging that the Defendant
violated Arizona statutes and regulations requiring it to obtain an air quality permit, to submit
notifications, to record and report emissions of hazardous air pollutants, and to pay past due
annual air quality administrative and emissions fees in accordance with Title 18 of the Arizona

1 Administrative Code (“A.A.C.”), Chapter 2, Articles 3 and 11 and adopted pursuant to Arizona
2 Revised Statutes (“A.R.S.”) Title 49, Chapter, 3, Article 2. The State brought its claims
3 pursuant to A.R.S. §§ 49-426(E)(1), 49-462, and 49-463 seeking fees, civil penalties and
4 injunctive relief;
5

6 B. Stephen A. Owens is the Director of the Arizona Department of Environmental
7 Quality (“ADEQ”), and has been duly authorized by the State to enter into this Consent
8 Judgment for and on behalf of the State;
9

10 C. Defendant, North American Sleek Craft, Inc. (“NASC”), located at 1100 N. Lake
11 Havasu Avenue and 1101 Gauge St., Lake Havasu City, Arizona 86403 is a manufacturer of
12 custom fiberglass powerboats.
13

14 D. NASC utilizes open molding resin and gel coat operations in its manufacture of
15 fiberglass powerboats.
16

17 E. NASC’s open molding resin and gel coat operations result in the emission of
18 styrene, a hazardous air pollutants (“HAPs”) as defined in A.R.S. § 49-401.01(16), Title 40
19 Code of Federal Regulations Part 63, Section 2 (“40 CFR 63.2”)and as listed in Section 112(b)
20 of the 1990 Amendments to the Clean Air Act.

21 F. The State alleges that since 2000, NASC operated its facility as a major source of
22 HAPs without a Class I major source air quality permit.
23

24 G. The State alleges that NASC failed to submit an initial notification to the U.S.
25 Environmental Protection Agency on or before December 20, 2001, as an existing major source
26 subject to Subpart VVVV-National Emission Standards for Hazardous Air Pollutants for Boat

1 Manufacturers, in accordance with 40 CFR §§ 63.9(b) and 63.5764(a) and (b), Table 7 as
2 adopted by A.A.C. R18-2-1101(A) and (B).
3

4 H. The State alleges that NASC has failed, beginning August 23, 2003, to maintain
5 records of the total amounts used per month and the weighted-average organic HAPs contents
6 of: production resin, pigmented gel coat, clear gel coat, tooling resin, and tooling gel coat. Such
7 records are required to be maintained in accordance with 40 CFR §§ 63.10(b)(1) and
8 63.5767(c)(1) as adopted by A.A.C. R18-2-1101(A) and (B).
9

10 I. The State alleges that NASC failed to submit a notification to ADEQ of
11 compliance status for open molding operations on or before September 22, 2005, in accordance
12 with 40 CFR §§ 63.9(h) and 63.5761(a), Table 7 as adopted by A.A.C. R18-2-1101(A) and (B).
13

14 J. The State alleges that NASC failed to pay its annual 2000 through 2001 emissions
15 fees and permit fees, failed to pay its annual 2001 through 2006 administrative fees, and failed
16 to pay its annual 2002 through 2005 emissions-based fees pursuant to A.R.S. § 49-426(E)(1) and
17 A.A.C. R18-2-326.
18

19 K. The State alleges that NASC failed to submit to ADEQ, by March 1, 2006, its first
20 complete compliance report covering the period of August 23, 2004 through December 31,
21 2005, pursuant to 40 CFR §§ 63.10(d)(1) and 63.5764(a) and (b)(1) and (2).
22

23 L. The State alleges that NASC failed to submit to ADEQ its completed annual air
24 emission inventory questionnaires for calendar years 2000 through 2005, by March 31 following
25 the end of each calendar year, pursuant to A.A.C. R18-2-327.
26

1 M. The State alleges that NASC failed to comply with the requirements in 40 C.F.R.
2 subpart VVVV (40 C.F.R. §63.5680 et seq.).

3
4 N. On or about _____, ADEQ filed civil complaint no. _____ in the
5 Superior Court of Arizona, County of Maricopa against NASC (“the Complaint”);

6 O. NASC acknowledges that it has been provided with a copy of the Complaint in
7 this action and waives service of process. NASC further acknowledges that it has been fully
8 advised of its right to a trial in this matter and has waived the same;
9

10 P. The parties hereto agree that settlement of the violations alleged in the Complaint
11 is in the best interest of the parties and the public, and that entry of this Consent Judgment
12 without further litigation is the most appropriate means of resolving the allegations contained in
13 the Complaint;
14

15 Q. NASC admits the jurisdiction of this Court and that venue is proper in Maricopa
16 County. NASC, however, does not admit the State’s allegations of violations contained in the
17 Complaint or this Consent Judgment.
18

19 R. NASC acknowledges that the State has made no promises of any kind or nature
20 other than what is set forth in this Consent Judgment, and that the NASC has entered into this
21 Consent Judgment voluntarily after due consideration.

22 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as
23 follows:
24
25
26

1 II. JURISDICTION AND VENUE

2 The Court has jurisdiction over the subject matter of this action and over the parties
3 pursuant to A.R.S. §§ 49-462, 49-463 and 12-1801. Venue is proper in Maricopa County under
4 A.R.S. § 12-401(17).
5

6 III. BINDING EFFECT

7 A. This Consent Judgment shall apply to, and be binding upon NASC and its
8 successors and assigns. NASC certifies that its undersigned representative is fully authorized to
9 enter into the terms and conditions of this Consent Judgment, to execute it on behalf of North
10 American Sleek Craft, Inc., and to legally bind NASC to its terms.
11

12 B. The parties shall be bound by this Consent Judgment and shall not contest its
13 validity or terms in any subsequent civil, criminal or administrative proceeding.
14

15 C. NASC shall provide a copy of this Consent Judgment to each contractor retained
16 to perform any activity required by this Consent Judgment. In any action to enforce this
17 Consent Judgment, NASC shall not raise as a defense the failure by any of its agents, servants,
18 contractors, employees, successors or assigns to take action necessary to comply with this
19 Consent Judgment.
20

21 IV. DEFINITIONS

22 The terms used in this Consent Judgment shall have the same meanings defined in A.R.S.
23 Title 49, Chapter 3, and all applicable regulations.
24
25
26

1 A. “Day” shall mean a calendar day. In computing any period under this Consent
2 Judgment, where the last day would fall on a Saturday, Sunday, or a State or Federal holiday,
3 the period shall run until the close of business of the next working day;

4
5 B. “Effective Date” shall mean the day this Consent Judgment is entered by
6 the Court.

7 V. CIVIL PENALTY AND FEES

8 A. Within thirty (30) days of the Effective Date of this Consent Judgment, NASC
9 shall pay a civil penalty to the State in the amount of Fourteen Thousand Nine Hundred and
10 Thirty Dollars (\$14,930.00), and, based on ADEQ’s allegations that NASC required a Title V air
11 quality permit, NASC shall pay Sixty Thousand Seventy Dollars (\$60,070.00) for its annual
12 emission fees and annual permit fees for calendar years 2000 and 2001, its annual administrative
13 fees for calendar years 2001 through 2006, and its annual emissions-based fees for 2002 through
14 2005.

15
16 B. The State and NASC agree that the civil penalty imposed by the State and agreed
17 to by NASC constitutes a debt for a fine, penalty or forfeiture payable to and for the benefit of a
18 governmental unit, is not compensation for actual pecuniary loss, and is specifically non-
19 dischargeable under 11 U.S.C. § 523(a)(7).

20
21 VI. MANNER OF PAYMENT

22
23 All payments made to the State under this Consent Judgment, including the monetary
24 judgment and interest payments, shall be made by cashier’s check or money order payable to
25 “State of Arizona” and shall be hand-delivered or mailed and postmarked, postage prepaid, to:
26

1 Michael Clark
2 Chief Financial Officer
3 Arizona Department of Environmental Quality
4 ATTN: Accounts Receivable
5 1110 W. Washington Street
6 Phoenix, AZ 85007

7 together with a letter tendering the payment. In the alternative, upon prior written notification to
8 the Chief Financial Officer at the above address, the payments may be made by wire transfer to
9 "State of Arizona", Bank of America, Account No. 122101706-001-000-985. All letters
10 regarding payment shall identify this case by the names of the Parties and the Court docket
11 number. Copies of the letters shall be sent to the Office of the Attorney General at:

12 Barbara U. Pashkowski
13 Assistant Attorney General
14 Environmental Enforcement Section
15 Office of the Attorney General
16 1275 W. Washington Street
17 Phoenix, Arizona, 85007

18 and to ADEQ at:

19 Manager, Air Quality Compliance Section
20 Arizona Department of Environmental Quality
21 1110 W. Washington Street
22 Phoenix, AZ 85007

23 NASC shall pay interest on any amount not paid by the due date at the rate established
24 pursuant to A.R.S. § 44-1201. If NASC fails to pay the full amount of the Judgment as required
25 by Sections V and VI, at the election of the State this Judgment shall become null and void, and
26 the State may take action to seek penalties for any and all violations contained in the Complaint.

1 VII. INJUNCTIVE RELIEF

2 A. NASC shall submit to ADEQ, Manager, Air Quality Compliance Section,
3
4 its past due 2005 Annual Emissions Inventory Questionnaire by July 10, 2006, pursuant to
5 A.A.C. R18-2-327(A).

6 B. Until the issuance of an ADEQ Air Quality Permit, NASC shall fully comply with
7
8 all the requirements of Subpart VVVV of 40 CFR § 63.5680 et seq.

9 VIII. STIPULATED PENALTIES

10 A. If NASC, or any entity owned, controlled or managed by NASC commits civil
11
12 violations of A.R.S. §§ 49-426, 49-426.03 and rules adopted there under, or Subpart VVVV of
13
14 40 CFR § 63.5680 et seq. at any time through the first day an Air Quality Permit is issued to
15
16 NASC, or fails to comply with the requirements in Sections V, VI, or VII, the State in its sole
17
18 discretion, shall have the option of either collecting stipulated penalties pursuant to this section,
19
20 or pursuing statutory penalties.

21 B. If the State elects to collect stipulated penalties, NASC agrees to pay a penalty
22
23 pursuant to the schedule below:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day of Violation</u>
1 st through 31 st day	\$2,000 per day per violation
32 nd through 60 th day	\$4,000 per day per violation
After 60 days	\$5,000 per day per violation

1 C. The stipulated penalties do not prevent the State from taking any other
2 enforcement action necessary to protect the public health, or welfare or the environment for
3 these future violations.
4

5 D. NASC shall pay the stipulated damages set forth in this Section within twenty (20)
6 days following written demand by the State. Payment shall be made in the manner set forth in
7 Section VI. Stipulated damages shall begin to accrue on the day after performance is due and
8 shall continue through the final day of completion, even if no notice is sent to NASC. Nothing
9 herein shall prevent the simultaneous accrual of separate stipulated damages for separate
10 violations of the Consent Judgment.
11

12 IX. MATERIAL BREACH

13
14 Any failure by NASC to pay the monetary judgment within the times specified by Section
15 V, pay the stipulated penalties within the times specified by Section VIII, comply with 40
16 C.F.R. subpart VVVV, or provide the 2005 Annual Emissions Inventory Questionnaire as
17 specified by Section VII shall constitute a material breach and violation of this Consent
18 Judgment. The State, in its sole discretion, shall have the option of either:
19

20 A. Enforcing this Consent Judgment through the Court, in which case NASC shall be
21 liable for interest and additional penalties pursuant to the provisions of A.R.S. § 49-113(B) and
22 the State's reasonable costs and attorneys' fees incurred in enforcing this Consent Judgment; or
23

24 B. Declaring the Consent Judgment null and void, and the State may pursue the
25 Complaint or refile this action against NASC. In this event NASC shall be barred from alleging
26 the affirmative defenses of estoppel, laches, or the expiration of any statute of limitations. In any

1 future actions for the violations contained in the Complaint, NASC shall receive credit for any
2 civil penalties paid to the State pursuant to this Consent Judgment.

3
4 **X. RESERVATION OF RIGHTS**

5 A. Nothing in this Consent Judgment shall constitute a permit or order of any
6 kind, or a modification of any permit or order of any kind, under federal, state or local
7 law. Nothing in this Consent Judgment shall in any way alter, modify or revoke federal, state or
8 local statutes, regulations, rules or requirements. Nor shall this Consent Judgment affect or
9 relieve NASC in any manner of its obligations to apply for, obtain and comply with all
10 applicable federal, state and local permits and orders, and to comply with all other federal, state
11 and local statutes, regulations, rules and requirements. Compliance with the terms of this
12 Consent Judgment shall be no defense to an action to enforce any such requirement.

13
14 B. This Consent Judgment does not encompass issues regarding violations, releases,
15 contamination, sources, operations, facilities or processes not expressly set forth in the
16 allegations contained in the Complaint or expressly covered by the terms of this Consent
17 Judgment and is without prejudice to the rights of the State of Arizona arising under any
18 environmental statute, rule or regulation with regard to such other issues.

19
20 C. The State shall have the right to take enforcement action for any and all violations
21 of environmental laws occurring after the Effective Date and not alleged in the Complaint.

22
23 D. The State shall have the right to use the violations that are the subject of this
24 Consent Judgment in any future proceedings brought against NASC for the
25 sole purpose of determining the appropriate penalties in that future proceeding.
26

1 XI. RELEASE

2 In consideration of payment of the full amount of the Judgment, Section V, the
3 NASC and its past, present, and future directors, officers, members, employees, agents, and
4 successors and assigns are released from any and all civil liability to the State, for the violations
5 alleged in the Complaint.
6

7 NASC releases the State from any and all claims, known and unknown, it may have in
8 relation to the allegations contained in the Complaint.
9

10 XII. MODIFICATIONS

11 Except as provided for herein, there shall be no modifications of this Consent Judgment
12 without written approval of each party to this Consent Judgment.
13

14 XIII. TERMINATION

15 The provisions of this Consent Judgment shall be deemed satisfied and shall terminate
16 after ADEQ has issued to NASC an Air Quality Permit and NASC has paid the civil penalties,
17 fees, stipulated penalties, and fulfilled the injunctive relief requirements pursuant to Sections V,
18 VIII, and VII, respectively, of this Consent Judgment.
19

20 After satisfaction of this Consent Judgment, upon request by NASC or after due course,
21 the State shall execute and file a satisfaction of judgment with this court and in any County in
22 which this Judgment was recorded.
23

24 XIV. ATTORNEYS FEES AND COSTS

25 Each party shall bear its own costs and attorney's fees in this action, except that as
26 permitted by law, NASC shall be liable to the State for any costs or attorney fees incurred by the

1 State to successfully enforce this Consent Judgment. Provided, however, that in any action to
2 enforce this Consent Judgment, the prevailing party shall be entitled to reimbursement of its
3 reasonable costs and attorneys' fees incurred.
4

5 **XV. PROOF OF VIOLATIONS IN FUTURE PROCEEDINGS**

6 Notwithstanding the provisions of Section I, paragraph Q, the alleged violations that are
7 the subject of this Consent Judgment may be used by the State in any future enforcement
8 proceedings brought against NASC for the sole purpose of determining appropriate penalties in
9 that future proceeding. For this limited purpose only, NASC agrees to admit the violation
10 alleged in the Complaint.
11

12 **XVI. RETENTION OF JURISDICTION**

13 The Court shall retain jurisdiction for the purposes of interpreting, implementing,
14 modifying and enforcing the terms and conditions of this Consent Judgment, to resolve disputes
15 arising hereunder and to take any action necessary or appropriate for its construction or
16 execution.
17
18

19 DONE IN OPEN COURT this _____ day of _____, 2006.
20
21

22 _____
Judge of the Superior Court
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