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SACRAMENTO COURTS
DEPT. #53

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10 *State Air Resources Board, and James Goldstene in*
his Official Capacity as Executive Director of the
11 *State Air Resources Board*

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SACRAMENTO

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15 **PEOPLE OF THE STATE OF**
16 **CALIFORNIA ex rel. THE STATE AIR**
17 **RESOURCES BOARD,**

Plaintiff,

18 v.

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20 **RITE AID CORPORATION,**

Defendant.

21
22 **AND RELATED CROSS-ACTION.**
23

Case No. 34-2010-00085629

STIPULATED JUDGMENT

Dept.: 53

Judge: The Honorable David I. Brown

Trial Date: None Set

Action Filed: August 19, 2010

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25 This Stipulated Judgment is entered into by and between the State Air Resources Board
26 ("Board") and Rite Aid Corporation (Rite Aid).
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1 **RECITALS**

2 A. The Board is a public agency of the State of California. The Board is the state agency
3 charged with attaining and maintaining ambient air quality standards in the State of California.

4 B. Rite Aid is a corporation that, through affiliated entities, owns or operates stores
5 throughout the State of California, including but not limited to Sacramento County, where it sells,
6 supplies, and offers for sale merchandise to the general public. This merchandise includes
7 automotive windshield washer fluid.

8 C. Volatile organic compounds (VOC) can vaporize and react with nitrogen oxides in
9 the presence of sunlight and heat to form ground-level ozone, a kind of smog.

10 D. The limit of VOC specified for automotive windshield washer fluid in most of
11 California is 1%. This standard applies to automotive windshield washer fluid sold, supplied, or
12 offered for sale in all areas of California except certain mountainous areas, which the regulation
13 designates as "Type A areas." (Cal. Code Regs., tit. 17, § 94509, subd. (a).)

14 E. Herein, the term "High-VOC Automotive Windshield Washer Fluid" means pre-
15 mixed automotive windshield washer fluid that contains more than 1% VOC.

16 F. The Board's Executive Officer or his or her delegate may require a responsible party,
17 including the seller or supplier of a product, to provide information about the product, such as
18 purchase and sales records. (Cal. Code Regs., tit. 17, § 94513, subd. (a).)

19 G. Any person who violates any regulation of the Board issued pursuant to part 4,
20 division 26, of the Health and Safety Code, including sections 94509 and 94513, title 17, of the
21 California Code of Regulations, is liable for civil penalties. (Health & Saf. Code, §§ 42402 –
22 42402.3.)

23 H. On August 19, 2010, the People of the State of California ex rel. the State Air
24 Resources Board filed a complaint for civil penalties and injunctive relief against Rite Aid,
25 alleging, among other facts, the following:

26 i) Beginning in March 2007 and continuing through at least April 2009, Rite Aid
27 offered for sale and sold at least 794 gallons of pre-mixed windshield washer fluid with a VOC
28 content of between 5% and 30% in non-Type A (non-mountainous) areas of California.

1 4. Based on the foregoing violations, Rite Aid is liable for civil penalties pursuant to
2 Health and Safety Code, sections 42402 to 42402.3.

3 **Civil Penalties and Attorneys Fees**

4 5. Within fifteen days of the Effective Date of this Stipulated Judgment, Rite Aid shall
5 wire \$410,000.00 to the Board's Air Pollution Control Fund. This sum covers violations of
6 California Code of Regulations, title 17, section 94509, subdivision (a); California Code of
7 Regulations, title 17, section 94513; and the Board's attorney fees.

8 **Filing Fees Due to the Court**

9 6. Within fifteen days of the Effective Date of this Stipulated Judgment, Rite Aid shall
10 pay to the Court \$535.00, pursuant to Government Code section 6103.5, subdivision (a).

11 **Injunction**

12 7. Rite Aid will not sell High-VOC Automotive Windshield Washer Fluid anywhere in
13 California.

14 8. All national advertisements for High-VOC Automotive Windshield Washer Fluid will
15 note that these products are not sold in California;

16 9. Rite Aid will appoint a Senior Manager for Environmental Health & Safety to be a
17 point person on environmental compliance, and will provide the Board with his or her direct
18 contact information;

19 10. The Senior Manager for Environmental Health & Safety will be responsible for
20 monitoring Rite Aid's various computer systems, distribution centers, and retail outlets to ensure
21 that High-VOC Automotive Windshield Washer Fluid is not being sold at Rite Aid retail outlets
22 in non-Type A areas of California;

23 11. In furtherance of its environmental compliance program, the Senior Manager for
24 Environmental Health & Safety will perform the following tasks, which will include, but not be
25 limited to:

- 26 a. Print, review, and retain (for a period of three years) weekly reports showing all
27 California sales of High-VOC Automotive Windshield Washer Fluid in non-Type
28

- 1 A areas. These reports will contain the following information: dates of sales,
2 brand names, manufacturers, store locations, and quantities sold;
- 3 b. Print, review, and retain (for a period of three years) quarterly reports showing a
4 summary of California sales of all windshield washer fluid products, regardless of
5 type or location. These reports will contain the following information: brand
6 names, freeze protection strengths, manufacturers, and quantities sold;
- 7 c. Upon discovery of any sale of High-VOC Automotive Windshield Washer Fluid in
8 non-Type A areas of California, the manager will notify the Board within ten
9 working days, and in the notification, the manager will identify the corrective
10 actions taken to prevent further sales;
- 11 d. Within thirty days of the end of each quarter, the manager will provide the Board
12 with copies of the quarterly reports showing a summary of California sales of all
13 windshield washer fluid products, regardless of type or location, for a period of
14 three years;
- 15 e. Within ninety days of a demand from the Board, the manager will provide the
16 weekly sales reports for High-VOC Automotive Windshield Washer Fluid;
- 17 f. Within ninety days of a demand from the Board, the manager will provide weekly
18 sales reports for any regulated product requested by the Board.

19 **The People's Release of Rite Aid**

20 12. Upon receipt of the payment specified in paragraph 5, above, the People of the State
21 of California ex rel. the State Air Resources Board shall and do release, discharge and covenant
22 not to sue or to take administrative action against Rite Aid, including its officers, directors, and
23 shareholders, for Matters Covered. "Matters Covered" are the causes of action alleged in the
24 Complaint for Civil Penalties and Injunctive Relief in this matter, attached as Exhibit 1, except
25 that "Matters Covered" is limited to actions occurring before the Effective Date of this Stipulated
26 Judgment.

1 **Rite Aid's Release of the Board and the State of California**

2 13. Upon the Effective Date of this Stipulated Judgment, Rite Aid shall and does release,
3 discharge and covenant not to sue the Board, the State of California, or any of their employees,
4 including each and every constituent agency, board, department, office, commission, fund or
5 other entity thereof, and successors and assigns of each and every constituent of the State of
6 California, for any and all claims or causes of action, of every kind and nature whatsoever, in law
7 and in equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, that
8 arise out of or are related to this law suit or the administrative actions that preceded it.

9 14. Rite Aid will dismiss its appeal of the Court's order granting the Special Motion to
10 Strike.

11 **Reservation of Rights**

12 15. The Board, on the one hand, and Rite Aid, on the other hand, reserve their respective
13 rights to initiate judicial or administrative action against each other for any matter not released by
14 this Stipulated Judgment. Nothing in this Stipulated Judgment shall constitute or be construed as
15 a satisfaction or release from liability for any conditions or claims arising as a result of past,
16 current, or future operations or activities of Rite Aid that are not Matters Covered by this
17 Stipulated Judgment. Nothing herein is intended or shall be construed as a waiver of the Board's
18 right to institute an action to compel compliance with this Stipulated Judgment. In addition,
19 nothing in this Stipulated Judgment is intended or shall be construed to preclude the Board from
20 exercising its authority under any statute, regulation, ordinance, or other law.

21 **Stipulated Judgment Does Not Bind Any Other Agency**

22 16. This Stipulated Judgment is made and entered into by and on behalf of the Board
23 only. Except as expressly provided in this Stipulated Judgment, nothing in this Stipulated
24 Judgment is intended or shall be construed to preclude the Attorney General from exercising his
25 or her authority as an independent Constitutional officer under any law, statute, or regulation.
26 Furthermore, except as expressly provided in this Stipulated Judgment, nothing in this Stipulated
27 Judgment is intended or shall be construed to preclude any state, local, or federal agency, board,
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1 department, office, commission, or entity from exercising its authority under any law, statute,
2 regulation, or ordinance.

3 **Jurisdiction, Interpretation**

4 17. This Court shall retain jurisdiction to interpret, modify, and enforce the terms and
5 conditions of this Stipulated Judgment. This Stipulated Judgment shall be governed by and
6 construed in accordance with the laws of the State of California.

7 **Integration**

8 18. This Stipulated Judgment contains all of the terms and conditions agreed upon by the
9 parties relating to the matters covered by this Stipulated Judgment, and supersedes any and all
10 prior and contemporaneous agreements, negotiations, correspondence, understandings, and
11 communications of the parties, whether oral or written, respecting the matters covered by this
12 Stipulated Judgment. This Stipulated Judgment may be amended or modified only by a writing
13 signed by the parties or their authorized representatives, and then by order of the Court.

14 **Authority to Execute**

15 19. Each party to this Stipulated Judgment represents and warrants that the person who
16 has signed this Stipulated Judgment on its behalf is duly authorized to enter into this Stipulated
17 Judgment, and to bind that party to the terms and conditions of this Stipulated Judgment.

18 **Parties to Bear Their Own Costs and Attorneys Fees**

19 20. Each party to this Stipulated Judgment shall bear its own respective costs and
20 attorney fees in connection with this matter, except as specifically stated in paragraphs 5 through
21 6, above.

22 **Counterparts**

23 21. This Stipulated Judgment may be executed by the parties in counterpart originals with
24 the same force and effect as if fully and simultaneously executed as a single, original document.

25 **Waiver of Appeal Right; Reservation of Right to Appeal Collateral Orders**

26 22. The parties agree to waive their right to appeal from this Stipulated Judgment.
27 Nothing in this Stipulated Judgment shall be construed as a waiver of any party's right to appeal
28 from an order that arises from an action to enforce the terms of this Stipulated Judgment.

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Effective Date

23. The "Effective Date" of this Stipulated Judgment shall be the date that it is entered by a Judge of the Superior Court.

No Third Party Benefits

24. This Stipulated Judgment is made for the sole benefit of the parties, and no other person or entity shall have any rights or remedies under or by reason of this Stipulated Judgment, unless otherwise expressly provided for herein.

Procedure

25. If necessary, Rite Aid shall cooperate and join with the Board in filing a motion for entry of judgment, under Code of Civil Procedure section 664.6.

Interpretation

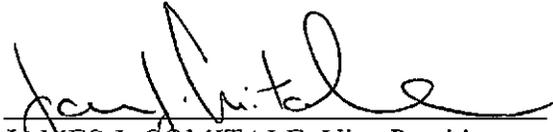
26. This Stipulated Judgment was drafted equally by all parties. The parties agree that the rule of construction holding that ambiguity is construed against the drafting party shall not apply to the interpretation of this Stipulated Judgment.

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IT IS SO STIPULATED.

RITE AID CORPORATION

Dated: April 2, 2012



JAMES J. COMITALE, Vice President,
Assistant Secretary, and Assistant General
Counsel of Rite Aid Corporation

STATE AIR RESOURCES BOARD

Dated: _____

JAMES GOLDSTENE, Executive Officer,
State Air Resources Board, on behalf of the
People of the State of California ex rel. the
State Air Resources Board, the State Air
Resources Board, and James Goldstene, in
his Official Capacity as Executive Director
of the State Air Resources Board

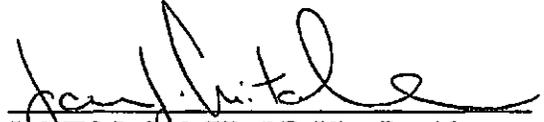
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IT IS SO STIPULATED.

RITE AID CORPORATION

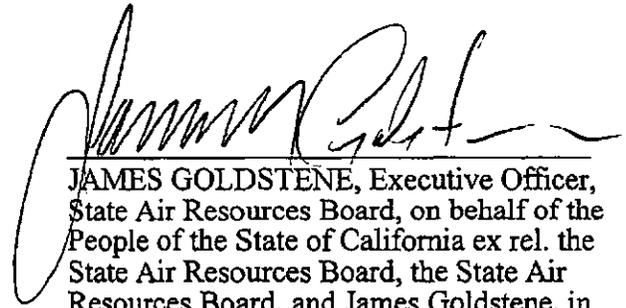
Dated: April 2, 2012



JAMES J. COMITALE, Vice President,
Assistant Secretary, and Assistant General
Counsel of Rite Aid Corporation

STATE AIR RESOURCES BOARD

Dated: April 26, 2012



JAMES GOLDSTENE, Executive Officer,
State Air Resources Board, on behalf of the
People of the State of California ex rel. the
State Air Resources Board, the State Air
Resources Board, and James Goldstene, in
his Official Capacity as Executive Director
of the State Air Resources Board

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