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6 CENTER FOR ENVIRONMENTAL HEALTH

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11
12 CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,

13 Plaintiff,

14 v.

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16 BASIC INTERNATIONAL, INC. DBA
BASIC MEDICAL INDUSTRIES, INC.;
17 DASH MEDICAL GLOVES, INC.;
AMMEX CORPORATION; BIG TIME
18 PRODUCTS, LLC; BOSS
MANUFACTURING COMPANY;
19 GOLDMAX INDUSTRIES, INC.; PRO-
STAT, INC.; RITE AID CORPORATION;
20 and Defendant DOES 1 through 200,
inclusive,

21 Defendants.

Case No. CGC-09-494337

**[PROPOSED] CONSENT JUDGMENT
RE: AMMEX CORPORATION**

1 **1. INTRODUCTION**

2 **1.1** On November 10, 2009, plaintiff the Center for Environmental Health
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint entitled *Center*
4 *for Environmental Health v. Basic International, Inc., et al.*, San Francisco County Superior
5 Court Case Number CGC-09-494337 (the “Complaint”), for civil penalties and injunctive relief
6 pursuant to the provisions of Cal. Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”). On
7 December 22, 2009, CEH amended the Complaint to name Ammex Corporation (“Defendant”) as
8 a defendant (CEH and Defendant collectively referred to as the “Parties”).

9 **1.2** Defendant is a corporation that employs 10 or more persons and
10 manufactured, distributed and/or sold vinyl gloves (the “Products”) in the State of California.

11 **1.3** On or about October 14, 2009, CEH served Defendant and the appropriate
12 public enforcement agencies with the requisite 60-day Notice (the “Notice”) alleging that
13 Defendant was in violation of Proposition 65. CEH’s Notice and the Complaint in the CEH
14 Action allege that Defendant exposes people who use or otherwise handle the Products to di(2-
15 ethylhexyl) phthalate (“DEHP”), a chemical listed by the State of California as known to cause
16 cancer, birth defects and other reproductive harm, without first providing clear and reasonable
17 warning to such persons regarding the carcinogenicity and reproductive toxicity of DEHP. The
18 Notice and Complaint allege that Defendant’s conduct violates Health & Safety Code § 25249.6,
19 the warning provision of Proposition 65. Defendant disputes such allegations and asserts that all
20 of its products are safe and comply with all applicable laws.

21 **1.4** For purposes of this Consent Judgment only, the parties stipulate that this
22 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and
23 personal jurisdiction over Defendant as to the acts alleged in CEH’s Complaint, that venue is
24 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent
25 Judgment as a full and final resolution of all claims which were or could have been raised in the
26 Complaint based on the facts alleged therein.

27 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of
28 certain disputed claims between the Parties as alleged in the Complaint. By executing this

1 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'
2 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
3 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
4 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
5 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
6 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
7 any other or future legal proceedings.

8 **2. COMPLIANCE - REFORMULATION**

9 **2.1 Reformulation Standard – Removal of DEHP.** As of the date of entry of
10 this Consent Judgment (the “Compliance Date”), Defendant shall not manufacture, distribute,
11 ship, or sell in California, or cause to be manufactured, distributed or sold in California, any
12 Product that contains in excess of trace amounts of DEHP. For purposes of this Consent
13 Judgment only, “in excess of trace amounts” is more than 600 parts per million (“ppm”). In
14 reformulating the Products to remove DEHP, Defendant may not use butyl benzyl phthalate
15 (“BBP”), di-n-hexyl phthalate (“DnHP”), di-n-butyl phthalate (“DBP”) or di-isodecyl phthalate
16 (“DIDP”) as identified and listed under Proposition 65 in excess of trace amounts as defined
17 above. DEHP, BBP, DnHP, DBP and DIDP are together referred to herein as “Listed
18 Phthalates.”

19 **2.2 Certification From Suppliers.** For so long as Defendant manufactures,
20 distributes, or ships Products for sale in California, Defendant shall issue specifications to its
21 suppliers requiring that the Products it intends to ship to California shall not contain DEHP or any
22 other Listed Phthalates in excess of trace amounts. Defendant shall obtain written certification
23 from its suppliers of such Products certifying that they do not contain DEHP.

24 **2.3 Defendant’s Testing.** In order to ensure compliance with the
25 requirements of Section 2.1, Defendant shall cause to be conducted the testing described below to
26 confirm that the Products intended for sale in California do not contain in excess of trace amounts
27 of DEHP. Testing shall be conducted in compliance with Section 2.1. All testing pursuant to this
28 section shall be performed by an independent laboratory in accordance with both of the following

1 test protocols: (1) EPA SW8270C; and (2) EPA SW3580A (together referred to as the “Test
2 Protocols”). At the written request of CEH, the results of the testing performed pursuant to this
3 section shall be made available to CEH on a confidential basis.

4 **2.3.1 Testing Frequency.** For the first two orders of Products from
5 each of Defendant’s suppliers after the Compliance Date, Defendant shall cause its supplier to
6 randomly select and test three (3) total Products intended for sale in California at a laboratory
7 certified to test under the federal Consumer Product Safety Improvement Act (“CPSIA”).
8 Following the testing of the first two orders as described above, Defendant shall, beginning on
9 January 1, 2011, at least once annually for each supplier of Products, randomly select and test
10 three (3) of the total Products purchased in that calendar year intended for sale in California from
11 each supplier of the Products. The annual testing of three randomly selected samples shall be
12 conducted one each a minimum of two months apart from separate orders of the Products.
13 Should Defendant stop selling or causing to be sold Products in California, the testing
14 requirements of Section 2.3 shall cease to apply. However, should Defendant begin such sales
15 again, Defendant shall begin testing again, and shall apply the testing frequency set forth in 2.3.1
16 as though the first shipment following Defendant’s re-initiation of Product sales in California
17 were the first one following the Compliance Date. Defendant shall have no further obligation to
18 either test products or require testing by its suppliers after December 31, 2013.

19 **2.3.2 Products That Contain Listed Phthalates Pursuant to**
20 **Defendant’s Testing.** If the results of the testing required pursuant to Section 2.3 show Listed
21 Phthalates in excess of trace amounts in a Product, Defendant shall: (1) refuse to accept all of the
22 Products that were purchased under the particular purchase order that are intended for sale in
23 California; (2) send a notice to the supplier explaining that such Products do not comply with the
24 suppliers’ certification; and (3) apply the testing frequency set forth in 2.3.1 as though the next
25 shipment from the supplier were the first one following the Compliance Date.

26 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct confirmatory
27 testing of the Products. Any such testing shall be conducted by CEH at an independent
28 laboratory, in accordance with both of the Test Protocols. In the event that CEH’s testing

1 demonstrates that the Products contain Listed Phthalates in excess of trace amounts subsequent to
2 the Compliance Date, CEH shall inform Defendant of the test results, including information
3 sufficient to permit Defendant to identify the Product(s). Upon written request, CEH will also
4 provide copies of any test results on the Products it is relying on to Defendant, along with the
5 Product packaging and, if requested by Defendant, a sample of any remaining, untested Product
6 from the same package as the allegedly non-compliant Product. Defendant shall, within 30 days
7 following such notice, provide CEH, at the address listed in Section 11, with the certification and
8 testing information demonstrating its compliance with Sections 2.2 and 2.3 of this Consent
9 Judgment. If Defendant fails to provide CEH with information demonstrating that it complied
10 with Sections 2.2 and/or 2.3, or otherwise fails to identify an error in CEH’s test results which
11 error caused CEH to erroneously conclude that a Product intended for sale in California did not
12 comply with this Consent Judgment, Defendant shall be liable for stipulated payments in lieu of
13 penalties pursuant to Section 2.4.1 below for Products for which CEH produces tests
14 demonstrating the presence of Listed Phthalates in the Products. The payments shall be made to
15 CEH and used for the purposes described in Section 3.1. If Defendant provides certification and
16 testing information demonstrating its compliance with Sections 2.1, 2.2 and 2.3, Defendant shall
17 not be liable for any such stipulated payments or for any violation of this Consent Judgment.

18 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments
19 in lieu of penalties are warranted under section 2.4, the stipulated payment amount shall be as
20 follows for each “Occurrence” of Defendant selling a Product containing Listed Phthalates after
21 the Compliance Date:

22	First Occurrence:	\$500
23	Second Occurrence:	\$750
24	Third Occurrence:	\$1,000
25	Thereafter:	\$2,500

26 CEH shall have the burden of proving noncompliance by a preponderance of the evidence. As
27 used in this section 2.4.1, an “Occurrence” is the sale of any number of Products in California
28 from the same lot containing Listed Phthalates.

1 **2.5 Products in the Stream of Commerce.** Defendant’s Products that have
2 been manufactured, distributed, shipped, sold, or that are otherwise in the stream of commerce
3 prior to the Compliance Date shall be released from any claims that were brought or that could be
4 brought by CEH in the Complaint, as though they were Covered Claims within the meaning of
5 Section 7, below. As a result, the stipulated payments and other obligations of this Section 2 do
6 not apply to these Products.

7 **3. SETTLEMENT PAYMENTS**

8 **3.1 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
9 \$6,500 in lieu of any civil penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall
10 use such funds to continue its work protecting people from exposures to toxic chemicals. As part
11 of this work, CEH intends to conduct periodic testing of the Products as set forth in Section 2.4.
12 The payment required under this section shall be made payable to CEH.

13 **3.2 Attorneys’ Fees and Costs.** Defendant shall pay \$13,500 to reimburse
14 CEH and its attorneys for their reasonable investigation fees and costs, attorneys’ fees, and any
15 other costs incurred as a result of investigating, bringing this matter to Defendant’s attention,
16 litigating and negotiating a settlement in the public interest. The payment required under this
17 section shall be made payable to Lexington Law Group, LLP.

18 **3.2 Delivery of payments.** All payments made pursuant to this Section 3 shall
19 be delivered to the Lexington Law Group, LLP at the address set forth in Section 11.1 and shall
20 be delivered within 14 days of entry of this Consent Judgment.

21 **4. MODIFICATION OF CONSENT JUDGMENT**

22 **4.1** This Consent Judgment may only be modified by written agreement of
23 CEH and Defendant, or upon motion of CEH or Defendant as provided by law.

24 **4.2** In the event that CEH in a subsequent settlement of a Proposition 65 action
25 involving vinyl gloves shall define “in excess of trace amounts” of DEHP (or any Phthalate
26 identified as a Listed Phthalate in this Consent Judgment) to be a figure higher than 600 ppm in
27 the vinyl gloves, then Defendant may, after meeting and conferring with CEH, seek modification
28 of this Consent Judgment upon a duly noticed motion and hearing to substitute such higher figure

1 for the 600 ppm reformulation standard in Section 2.1 and CEH shall not oppose such motion.

2 **5. ENFORCEMENT OF CONSENT JUDGMENT**

3 **5.1** After meeting and conferring in an effort to resolve any dispute, either
4 CEH or Defendant may, by motion or application of an order to show cause, enforce the terms
5 and conditions contained in this Consent Judgment. The prevailing party on any such motion
6 shall be entitled to recover its reasonable attorney's fees and costs associated with enforcing the
7 Consent Judgment or opposing the motion as the case may be.

8 **6. APPLICATION OF CONSENT JUDGMENT**

9 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
10 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
11 them.

12 **7. CLAIMS COVERED AND RELEASE OF CLAIMS**

13 **7.1** This Consent Judgment is a full, final and binding resolution between
14 CEH, acting on behalf of itself and in the public interest, and Defendant and its parents,
15 shareholders, divisions, subdivisions, subsidiaries, partners, affiliates and their successors and
16 assigns ("Defendant Releasees"), and those to whom Defendant Releasees distribute or sell the
17 Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees,
18 cooperative members, and licensees ("Downstream Defendant Releasees"), of any violation of
19 Proposition 65 or any other statutory or common law claims that have been or could have been
20 asserted in the public interest against Defendant, Defendant Releasees, and Downstream
21 Defendant Releasees regarding the alleged failure to warn about exposures to DEHP resulting
22 from any Products manufactured, distributed or sold by Defendant on or prior to the date of entry
23 of this Consent Judgment ("Covered Claims").

24 **7.2** CEH, its directors, officers, employees and attorneys, for themselves and
25 acting on behalf of the public interest pursuant to Health & Safety Code § 25249.7(d), hereby
26 release, waive, and forever discharge any and all Covered Claims that have been or could have
27 been asserted in the public interest against Defendant, Defendant Releasees, and Downstream
28 Defendant Releasees.

1 **7.3** Compliance with the terms of this Consent Judgment by Defendant and its
2 Defendant Releasees shall constitute compliance by that Defendant, its Defendant Releasees and
3 their Downstream Defendant Releasees with Proposition 65 for purposes of exposures to DEHP
4 or any Listed Phthalates from the Products.

5 **8. SEVERABILITY**

6 **8.1** In the event that any of the provisions of this Consent Judgment are held by
7 a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
8 affected.

9 **9. GOVERNING LAW**

10 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
11 State of California.

12 **10. RETENTION OF JURISDICTION**

13 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
14 the terms this Consent Judgment.

15 **11. PROVISION OF NOTICE**

16 **11.1** All notices required pursuant to this Consent Judgment and correspondence
17 shall be sent to the following:

18 For CEH:

19 Mark N. Todzo
20 Lexington Law Group, LLP
21 1627 Irving Street
22 San Francisco, CA 94122

23 For Defendant:

24 President
25 Ammex Corporation
26 P.O. Box 88047
27 Tukwila, WA 98138
28 Fax (425) 251-4631

29 **12. COURT APPROVAL**

30 **12.1** CEH will comply with the settlement notice provisions of Health and
31 Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

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13. EXECUTION AND COUNTERPARTS


13.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

14. AUTHORIZATION

14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro, Associate Director
Center for Environmental Health

Dated: 3/31/10

AMMEX CORPORATION

[Name]

[Title]

Dated: _____

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Michael Green, Executive Director
Center for Environmental Health

Dated: _____

AMMEX CORPORATION

AS Leg

Dated: 3/30/2010

Steven Ilg
[Name]

Vice President - Marketing
[Title]

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Ammex Corporation, the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: _____

JUDGE OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA