

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the California Air Resources Board (CARB), with its principal office at 1001 I Street, Sacramento, California, and Niteo Products, LLC (Niteo) with its principal place of business at 5949 Sherry Lane, Suite 540, Dallas, Texas, hereinafter referred to individually as "Party," or collectively as the "Parties."

RECITALS

1. The Consumer Products Regulations, title 17, California Code of Regulations (17 CCR) section 94500 et seq. applies to any person who sells, supplies, offers for sale, or manufactures consumer products for use in California.
2. The Table of Standards in 17 CCR section 94509(a) sets forth the percentage by weight of allowed volatile organic compounds (VOC) for the Air Freshener (double phase aerosol) category manufactured after December 31, 2012. Air Freshener (double phase aerosol) must meet the 20 percent by weight standard for VOC.
3. Failure to comply with the Consumer Products Regulations is a violation of state law resulting in penalties. Among other penalties, Health and Safety Code (H&SC) sections 42400 – 42403 authorize strict liability penalties up to \$10,000 for each day that the violation occurs.
4. CARB alleges that Niteo manufactured, sold, supplied, or offered for sale in California, Ozium Air Sanitizer that is subject to a VOC limit for the Air Freshener (double phase aerosol) category specified in 17 CCR section 94509(a).
5. CARB alleges that the Ozium Air Sanitizer product referenced in Recitals paragraph 4 contained concentrations of VOCs exceeding the 20 percent by weight VOC limit for the Air Freshener (double phase aerosol) category specified in 17 CCR section 94509(a).
6. CARB alleges that if the allegations described in Recitals paragraphs 4 and 5 were proven, civil penalties could be imposed against Niteo as provided in H&SC section 42402 et seq. for each and every unit involved in the violations.
7. Niteo admits the allegations described in Recitals paragraphs 4 and 5, but denies any liability resulting from said allegations.
8. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violation and voluntarily agree

to resolve this matter by means of this Agreement, without the need for formal litigation. Niteo has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. CARB accepts this Agreement in termination and settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against Niteo for the alleged violations referred to above, CARB and Niteo agree as follows:

9. Niteo shall not manufacture, sell, supply, or offer for sale in California, any consumer products in violation of the California Consumer Products Regulations set forth in 17 CCR section 94500 et seq.; the terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
10. Niteo, in settlement of the above-described violations of 17 CCR section 94507 et seq., agrees to pay a penalty to CARB in the amount of \$160,000 as set forth in this paragraph. Upon full execution of the Agreement, Niteo shall pay \$80,000 to the California Air Pollution Control Fund on the dates specified on Attachment A, Payment Transmittal Form, enclosed with this Agreement. Payment and the signed Agreement shall be mailed to:

Air Resources Board, Accounting Office
P.O. Box 1436
Sacramento, CA 95812-1436
11. Niteo agrees to fund a Supplemental Environmental Project (SEP), as described in Attachment B, SEP Proposal Summary, to offset a portion of the settlement amount, consistent with CARB's SEP policy. Niteo agrees that by funding the SEP described in Attachment B, Niteo will not receive a financial benefit.

Upon full execution of the Agreement, Niteo shall pay \$80,000 by wire, check, or credit card in satisfaction of the \$160,000 settlement amount described in Paragraph 10 payable to the SEP implementer (Coalition for Clean Air) on the dates specified on Attachment A, Payment Transmittal Form, enclosed with this Agreement or thirty days after all signature are affixed to this Agreement, whichever is later. Niteo will send the payment to:

Brian Sheridan
Development Director
Coalition for Clean Air
660 South Figueroa Street, Suite 1140
Los Angeles, California 90017

12. Niteo's responsibility for the Coalition for Clean Air's "Kids Making Sense" SEP set forth in the SEP Proposal Summary is limited to paying \$80,000 in accordance with the payment schedule in the Payment Transmittal Form and Niteo has no other responsibility for the SEP and is released of all liabilities as they relate to the SEP.
13. This Agreement shall apply to and be binding upon Niteo and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this settlement.
14. The Parties stipulate that this Agreement shall be the final resolution of CARB claims regarding the above-described alleged violations and shall have the same res judicata effect as a judgment in terms of acting as a bar to any civil action by CARB against Niteo, its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations. This Agreement shall be deemed the recovery of civil penalties for purposes of precluding subsequent criminal action as provided in H&SC section 42400.7(a).
15. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.
16. This Agreement constitutes the entire agreement and understanding between CARB and Niteo concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between CARB and Niteo concerning these claims.
17. The Effective Date of this Agreement shall be the date upon which it is fully executed.
18. This Agreement is deemed to have been drafted equally by CARB and Niteo; it will not be interpreted for or against either Party on the ground that said Party drafted it.
19. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all Parties to this Agreement.
20. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
21. It is further agreed that any stipulated penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7).

22. **Penalty Determination**

H&SC section 39619.7 requires CARB to provide information on the basis for the penalties it seeks. This Agreement includes this information, which is also summarized here.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

The penalty provision being applied in this case is H&SC section 42402 et seq. because Niteo sold, supplied, offered for sale, or manufactured for sale consumer products for commerce in California in violation of the Consumer Products Regulations (17 CCR section 94507 et seq.). The penalty provisions of H&SC section 42402 et seq. apply to violations of the Consumer Products Regulations because the regulations were adopted under authority of H&SC section 41712, which is in Part 4 of Division 26.

The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit or per vehicle basis for the penalty.

H&SC section 42402 et seq. provides strict liability penalties of up to \$10,000 per day for violations of the Consumer Product Regulations with each day being a separate violation. In cases like this, involving unintentional violations of the Consumer Products Regulations where the violator cooperates with the investigation, CARB has obtained penalties based on the excess emissions of VOCs. Administrative penalties are also obtained in some cases.

In this case, the total penalty is \$160,000 for emission violations. The per-unit penalty was based on 13.32 tons of excess VOC emissions. The penalty in this case was reduced because this was a strict liability first-time alleged violation and Niteo made diligent efforts to comply and to cooperate with the investigation. To come into compliance, Niteo modified their product to meet regulatory requirements for commerce in California.

Final penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar negotiated cases, and the potential cost and risk associated with litigating these particular alleged violations. The penalty reflects alleged violations extending over a number of days resulting in quantifiable harm to the environment considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per ton basis.

The final penalty in this case was based in part on confidential financial information or confidential business information provided by Niteo that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and Niteo that CARB does not retain in the ordinary course of business. The penalty also reflects CARB's assessment of the relative strength of its case against Niteo, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Niteo may have secured from its actions.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The Consumer Product Regulations do not prohibit emissions above a specified level, but they do limit the concentration of VOCs in regulated products. In this case, a quantification of the excess emissions attributable to the alleged violations was practicable because Niteo made the product formulation and sales data necessary to make this quantification available to CARB. Based upon this information (which Niteo has designated as confidential), the alleged violations were calculated to have 13.32 tons of excess VOC emissions emitted in California.

23. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid, or unenforceable in any jurisdiction, the remainder of this Agreement remains in full force and effect.
24. The Parties shall exchange signed copies of this Agreement. Facsimile, portable document format (PDF), or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall be provided to CARB for CARB's records, and shall thereafter be appended to this Agreement.
25. The undersigned represent that they have full power and authority to enter into this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

By: _____/S/_____

Name: Richard W. Corey

Title: Executive Officer

Date: November 26, 2019

Niteo Products, LLC

By: _____/S/_____

Name: Cameron Evans

Title: Chief Executive Officer

Date: November 13, 2019