

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and W.W. Grainger, Incorporated (Grainger), with its principal location at 100 Grainger Parkway, Lake Forest Illinois 60045, (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates CARB adopt regulations to achieve the maximum feasible reduction in volatile organic compounds (VOCs) by consumer products. (Health & Saf. Code § 41712.)
- (2) Regulation. CARB adopted the *Regulation for Reducing Emissions from Consumer Products* (Consumer Products Regulation) to reduce VOCs. (Cal. Code Regs., tit.17, §§ 94507 et seq.)
- (3) Regulatory Provisions. Any person who sells, supplies, offers for sale, or manufactures any consumer product for use in California shall comply with the standards set forth in the Consumer Products Regulation, including the VOC limit, ingredient prohibitions, labeling, reporting, displaying the date of manufacture, and other administrative requirements. (Cal. Code Regs., tit.17, §§ 94509–94515.) If anywhere on the container of any consumer product, the manufacturer represents that the product may be used or is suitable for a specific use in which a lower limit applies, the lowest applicable limit shall apply. (Cal. Code Regs., tit.17, § 94512(a).)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to ten thousand dollars (\$10,000) for strict liability violations in which the violation occurs. (Cal. Code Regs., tit.17, § 94507 et seq.; Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., 42402.1, 42402.2, 42402.3, and 42410.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Grainger was organized under the laws of Illinois as a Domestic BCA and conducted business in California.
- (6) Allegations. This Settlement Agreement settles Notice of Violation (NOV) CP20-06-01 and CP20-11-03, which was issued on June 1, 2020 and November 19, 2020. CARB alleged Grainger violated the Consumer Products Regulation by selling, supplying, offering for sale, or manufacturing for use in California, (1) Tough Guy Bahama Breeze that is subject to and exceeded a VOC limit of 15 percent by weight for the Fabric Refresher (aerosol) category; (2) Sprayway

Moisture Displacer Deep Penetrant contained a toxic compound, perchloroethylene, that is prohibited for the Penetrant category as outlined in Notice of Violation CP20-06-01. In addition, CARB alleged Grainger violated the Consumer Products Regulation by selling, supplying, offering for sale, or manufacturing for use in California, (3) Tough Guy Non-Ammoniated Glass Cleaner that is subject to and exceeded a VOC limit of 0.5 percent by weight for the General Purpose Cleaner (nonaerosol) category as outlined in Notice of Violation CP20-11-03. CARB alleges that if the allegations described in Paragraph 6 were proven, civil penalties could be imposed against Grainger for each and every day the noncompliant product was sold, supplied, offered for sale or manufactured for use in California.

- (7) Acknowledgment. Grainger admits to the facts in Paragraphs 5 and 6, but denies any liability resulting from said allegations.
- (8) Consideration. 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 violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, Grainger has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against Grainger for the alleged violations referred to above in Paragraph 6, and in consideration of Grainger's agreement to complete all terms and conditions set forth below, CARB and Grainger agree as follows:

- (9) Settlement Amount. Grainger shall pay a civil penalty of seven thousand dollars (\$7,000.00 USD), and agrees to fund a Supplemental Environmental Project entitled SEI Air Quality Education Program-Contra Costa (SEP) in the amount of seven thousand dollars (\$7,000.00 USD), consistent with CARB's SEP Policy, for a total settlement of fourteen thousand dollars (\$14,000.00 USD). Grainger shall make all payments within 30 calendar days from the date CARB notifies Grainger of the full execution of the Settlement Agreement.

- (10) Civil Penalty Payment Method. Grainger shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Grainger is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to Grainger in accordance with Paragraph 16 (Notices).
- (11) SEP Payment Method. Grainger shall fund the SEP by wire transfer, credit card, or check, payable to the SEP implementer/recipient, Strategic Energy Innovations using instructions provided separately by CARB in a Payment Transmittal Form. Grainger is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to Grainger in accordance with Paragraph 16 (Notices).
- (12) Prohibition Against Financial Benefit. Grainger has agreed that by funding the SEP entitled SEI Air Quality Education Program-Contra Costa, Grainger will not receive any direct or indirect financial benefit, and that whenever Grainger publicizes or refers to the SEP or the results of the SEP, Grainger will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (13) Assignment of Rights. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, Grainger assigns any and all rights against the SEP implementer to CARB.
- (14) Acceleration. If any payment is more than thirty (30) calendar days late from the payment schedule deadline, the entire remaining balance is accelerated to become due and payable immediately without notice or demand.
- (15) Documents. Grainger shall promptly email or mail the signed and dated Settlement Agreement to the address or email in Paragraph 16 (Notices).

(16) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:
California Air Resources Board
Enforcement Division / Settlement Agreements
Consumer Products Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to Grainger:
ATTN: Legal Department
W.W. Grainger, Incorporated
100 Grainger Parkway
Lake Forest, Illinois 60045

As to Grainger's Legal Representation:
Deepi Miller
Greenberg Traurig, LLP
1201 K Street, suite 1100
Sacramento, California 95814
millerde@gtlaw.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (17) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Grainger shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (18) Repeat Violations. Grainger agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (19) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background, and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 8 pages and 37 paragraphs.

- (20) Binding Effect. This Settlement Agreement binds Grainger, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (21) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (22) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (23) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (24) Choice of Law. This Settlement 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.
- (25) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.
- (26) Not Tax Deductible. For purposes of this Settlement Agreement, Grainger shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
- (27) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (28) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.

- (29) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (30) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (31) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (32) Release. In consideration of the full completion of civil penalty and SEP payment, and all other undertakings above, CARB hereby releases Grainger and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (33) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (34) Per Unit Penalty. The strict liability per unit penalty in this case is a maximum of \$10,000 per violation per day under Health and Safety Code section 42400 et seq., 38580 for violations of the Consumer Products Regulation.

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 excess emissions. Penalties based on days of violation are also obtained in some cases. The penalty in this case is for (1) 0.57 tons of excess VOC emissions resulting in a penalty of \$14,035.08 per ton of excess VOC, (2) three days resulting in a penalty of \$1,000 per day of prohibited toxics violation, and (3) three days resulting in a penalty of \$1,000 per day for product dating requirement violation.

- (35) Emissions. The provisions cited above prohibit VOC and/or toxic compound emissions above a specified percentage for the specified product category. Since CARB has alleged that the product did not meet the regulatory requirements, the emissions above the specified percentage were in excess and illegal.
- (36) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; voluntary disclosure; and any other relevant circumstances. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.
- (37) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Grainger and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Date: 9/22/2021

W.W. Grainger, Incorporated

Signature: /S/

Name: Laura Twining

Title: Manager, Corporate Product Compliance

Date: 9/15/2021