

## **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 Hawthorne Hydroponics LLC (Hawthorne), with its principal location at 3204 NW 38<sup>th</sup> Circle, Vancouver, Washington 98660 (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 nine hundred ten dollars (\$10,910.00 USD) for strict liability violations for each day in which the violation occurs. (Cal. Code Regs., tit.17, § 94507 et seq.; Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., and 42410.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, Hawthorne was organized under the laws of Delaware as a corporation and conducted business in California.
- (6) Allegations. This Settlement Agreement settles Notice of Violation (NOV) CP21-06-02 which was issued on June 25, 2021. CARB alleged Hawthorne violated the Consumer Products Regulation by selling, supplying, offering for sale, or manufacturing for use in California, Alchemist Isopropyl Alcohol Technical Grade 99.9% that is subject to and exceeded a VOC limit of 3 percent by weight for the Multi-purpose Solvent (nonaerosol) category and for failing to display the date of

manufacture as outlined in Notice of Violation CP21-06-02. CARB alleges that if the allegations described in Paragraph 6 were proven, civil penalties could be imposed against Hawthorne for each and every day the noncompliant product was sold, supplied, offered for sale or manufactured for use in California.

- (7) Acknowledgment. Hawthorne admits to the facts in paragraphs 1 through 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, Hawthorne 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 Hawthorne for the alleged violations referred to above in Paragraph 6, and in consideration of Hawthorne's agreement to complete all terms and conditions set forth below, CARB and Hawthorne agree as follows:

- (9) Settlement Amount. Hawthorne shall pay a civil penalty of ninety-two thousand, nine hundred twenty-two dollars and sixty-nine cents (\$92,922.69 USD) and agrees to fund a Supplemental Environmental Project (SEP) entitled Asthma Impact Model - Kern County Phase 2 in the amount of seventy-nine thousand, seventy-seven dollars and thirty-one cents (\$79,077.31 USD), consistent with CARB's SEP Policy, for a total settlement of one hundred seventy-two thousand dollars (\$172,000.00 USD). Hawthorne shall make all payments within 30 calendar days from the date CARB notifies Hawthorne of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Hawthorne 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. Hawthorne 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 Hawthorne in accordance with Paragraph 15 (Notices).

- (11) SEP Payment Method(s). Hawthorne shall fund the SEP by wire transfer, credit card, or check, payable to the SEP implementer/recipient, Central California Asthma Collaborative using instructions provided separately by CARB in a Payment Transmittal Form. Hawthorne 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 Hawthorne in accordance with Paragraph 15 (Notices).
- (12) Prohibition Against Financial Benefit. Hawthorne has agreed that by funding the SEP entitled Asthma Impact Model - Kern County Phase 2, Hawthorne will not receive any direct or indirect financial benefit, and that whenever Hawthorne publicizes or refers to the SEP or the results of the SEP, Hawthorne 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, Hawthorne assigns any and all rights against the SEP implementer to CARB.
- (14) Documents. Hawthorne shall promptly email or mail the signed and dated Settlement Agreement to the address or email in Paragraph 15 (Notices).
- (15) 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

Hawthorne Hydroponics LLC Settlement Agreement  
Notice of Violation: CP21-06-02

As to Hawthorne:

Hawthorne c/o The Scotts Company LLC  
Attn: Regulatory and Legal  
14111 Scottslawn Road  
Marysville, Ohio 43041  
greg.cunningham@scotts.com  
christina.grasseschi@scotts.com

As to Hawthorne's Legal Representation:

Christina Grasseschi  
The Scotts Miracle-Gro Company  
14310 Scottslawn Road  
Marysville, Ohio 43041  
christina.grasseschi@scotts.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.

- (16) Repeat Violations. Hawthorne agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (17) 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 35 paragraphs.
- (18) Binding Effect. This Settlement Agreement binds Hawthorne, 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.
- (19) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (20) 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.

- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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.
- (25) 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.
- (26) 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.
- (27) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (28) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.

- (29) Release. In consideration of the full completion of civil penalty, SEP payment, and all other undertakings above, CARB hereby releases Hawthorne 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.
- (30) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

### **PENALTY BASIS**

- (31) Per Unit Penalty. The strict liability per unit penalty in this case is a maximum of \$10,910.00 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 8.47 tons of excess VOC resulting in a penalty of \$20,000 per ton of excess VOC.

In cases like this, involving unintentional violations of the Consumer Products Regulations where there is a labeling violation and the violator cooperates with the investigation, CARB has obtained penalties based on at least three days of violation. The per unit penalty in this case is for three days resulting in a penalty of \$1,000.00 per day of violation.

- (32) Emissions. The provisions cited above prohibit emissions above a specified limit. Consumer products meeting the definition of a Multi-purpose Solvent (nonaerosol) are subject to a VOC limit of 3 percent by weight, effective December 31, 2013. Since CARB has alleged that the product did not meet the regulatory requirements, the emissions above the specified percentage were in excess and illegal.
- (33) 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; and voluntary disclosure. 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.

(34) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Hawthorne and confidential settlement communications.

(35) Effect of Settlement/Reservation of Rights. The following shall apply:

- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Hawthorne with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Hawthorne with respect to:
  - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
  - (ii) Facts that were not disclosed by Hawthorne to CARB.
  - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
  - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
  - (v) Any criminal liability.
  - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Hawthorne shall not assert, and may not maintain, any defense or claim based upon the principles of waiver,

- res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of Hawthorne or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Hawthorne, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Hawthorne is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Hawthorne's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Hawthorne's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: /S/

Name: Ellen M. Peter

Title: Chief Counsel

Date: June 9, 2022

**Hawthorne Hydroponics LLC**

Signature: /S/

Name: Mark Scheiwer

Title: VP – Treasurer

Date: May 24, 2022