

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 W.M. Barr & Company, Inc. (WM Barr) with its principal place of business at 6750 Lenox Center Court, Suite 200, Memphis, Tennessee.

RECITALS

1. The Consumer Products Regulation, 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 Aerosol Coating Products Regulation, 17 CCR section 94520 et seq. applies to any person who sells, supplies, offers for sale, applies, or manufactures any aerosol coating products for use in the State of California.
3. The Table of Standards in 17 CCR section 94509(a) sets forth the percentage by weight of allowable volatile organic compounds (VOC) for the Paint Thinner: nonaerosol category sold after December 31, 2013. Nonaerosol Paint Thinners must meet the three percent standard for VOC.
4. The Table of Standards in 17 CCR section 94509(a) sets forth the percentage by weight of allowable VOC for the Multi-purpose Solvent: nonaerosol and aerosol categories. Effective December 31, 2013, nonaerosol Multi-purpose Solvents must meet the three percent standard for VOC. Effective January 1, 2016, aerosol Multi-purpose Solvents must meet the ten percent standard for VOC.
5. Additional requirements for Multi-purpose Solvents and Paint Thinners are set forth in 17 CCR section 94509(p). Effective December 31, 2010, no person shall sell, supply, offer for sale, or manufacture for use in California a nonaerosol Multi-purpose Solvent or Paint Thinner product that contains greater than one percent Aromatic Compound content by weight. Effective January 1, 2016, no person shall sell, supply, offer for sale, or manufacture for use in California an aerosol Multi-purpose Solvent or Paint Thinner product that contains greater than one percent Aromatic Compound content by weight.
6. The Table of Reactivity Limits located in 17 CCR section 94522(a)(2) sets forth the maximum limits for Product-Weighted Maximum Incremental Reactivity (PWMIR) in aerosol coating products sold or manufactured after the specified effective date. Aerosol coating products in the Auto Body Primer category must meet the Reactivity Limit of 0.95 grams of ozone formed per gram of product after January 1, 2017.

7. Failure to comply with the Consumer Products Regulation and/or the Aerosol Coating Products Regulation 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.
8. CARB alleges that WM Barr manufactured, sold, supplied, and offered for sale in California, General Purpose Automotive Lacquer Thinner that CARB alleges is subject to a VOC limit for the Paint Thinner: nonaerosol category specified in 17 CCR section 94509(a).
9. CARB alleges that WM Barr manufactured, sold, supplied, and offered for sale in California, Klean Strip Prep-All (nonaerosol) that CARB alleges is subject to a VOC limit for the Multi-Purpose Solvent: nonaerosol category specified in 17 CCR section 94509(a).
10. CARB alleges that the General Purpose Automotive Lacquer Thinner and Klean Strip Prep-All (nonaerosol) products referenced in Recitals paragraphs 8 and 9 contained concentrations of VOC exceeding the three percent by weight VOC limit for the Paint Thinner: nonaerosol and Multi-Purpose Solvent: nonaerosol categories specified in 17 CCR section 94509(a).
11. CARB alleges that WM Barr manufactured, sold, supplied, and offered for sale in California, Klean Strip Prep-All (aerosol) and Naked Gun Spray Gun Paint Remover (aerosol) that CARB alleges are subject to a VOC limit for the Multi-Purpose Solvent: aerosol category specified in 17 CCR section 94509(a).
12. CARB alleges that the Klean Strip Prep-All (aerosol) and Naked Gun Spray Gun Paint Remover (aerosol) products referenced in Recitals paragraph 11 contained concentrations of VOC exceeding the ten percent by weight VOC limit for the Multi-Purpose Solvent: aerosol category specified in 17 CCR section 94509(a).
13. CARB alleges that WM Barr manufactured, sold, supplied, and offered for sale in California, General Purpose Automotive Lacquer Thinner, Klean Strip Prep-All (nonaerosol), and Naked Gun Spray Gun Paint Remover (aerosol) that CARB alleges are subject to an Aromatic Compound content limit for the nonaerosol and aerosol Multi-purpose Solvent or Paint Thinner categories specified in 17 CCR section 94509(p).
14. CARB alleges that the General Purpose Automotive Lacquer Thinner, Klean Strip Prep-All (nonaerosol), and Naked Gun Spray Gun Paint Remover (aerosol) products referenced in Recitals paragraph 13 contained concentrations of Aromatic Compound content exceeding the one percent limit for the nonaerosol and aerosol Multi-purpose Solvent or Paint Thinner categories specified in 17 CCR section 94509(p).

15. CARB alleges that WM Barr manufactured, sold, supplied, and offered for sale in California, Klean-Strip Bulldog Adhesion Promoter that CARB alleges is subject to the Reactivity Limit for the Auto Body Primer category specified in 17 CCR section 94522(a)(2).
16. CARB alleges that the Klean-Strip Bulldog Adhesion Promoter product referenced in Recitals paragraph 15 had a PWMIR value that exceeded the Reactivity Limit for the Auto Body Primer category specified in 17 CCR section 94522(a)(2).
17. CARB alleges that if the allegations described in Recitals paragraphs 8 through 16 were proven, civil penalties could be imposed against WM Barr as provided in H&SC section 42402 et seq.
18. WM Barr admits the allegations described in Recitals paragraphs 8 through 16, but denies any liability resulting from said allegations.
19. Based upon 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 pursuant to the terms and conditions of this Agreement.

TERMS AND CONDITIONS

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

20. WM Barr 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.
21. WM Barr, in settlement of the above-described violations, agrees to pay a penalty in the amount of six hundred thousand dollars (\$600,000) payable to the California Air Pollution Control Fund, within ten business days of the execution of this Agreement. Payment and a copy of a fully executed Agreement shall be mailed to the address specified on the Payment Transmittal Form enclosed with this Agreement.
22. This Agreement shall apply to and be binding upon WM Barr 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.

23. The parties stipulate that this Agreement shall be the final resolution of CARB claims regarding the above-described 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 WM Barr, 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).
24. 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.
25. This Agreement constitutes the entire agreement and understanding between CARB and WM Barr 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 WM Barr concerning these claims.
26. The Effective Date of this Agreement shall be the date upon which it is fully executed.
27. This Agreement is deemed to have been drafted equally by CARB and WM Barr; it will not be interpreted for or against either Party on the ground that said Party drafted it.
28. 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.
29. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
30. It is further agreed that the stipulated penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7).

31. **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 WM Barr 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 VOC and Aromatic Compounds. Administrative penalties are also obtained in some cases.

In this case, the total penalty is \$600,000 for emission violations. The per-unit penalty was based on 81.7 tons of excess VOC emissions, 8.4 tons of excess Aromatic Compound emissions, and 5.2 tons of excess ozone formed. The penalty in this case was reduced because WM Barr made diligent efforts to come into compliance, including modifying one product prior to CARB's notification, immediately ceasing sales of products under investigation, and reformulating a noncompliant product.

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 violations. The penalty reflects 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 WM Barr 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 WM Barr 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 WM Barr, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that WM Barr 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 VOC and Aromatic Compounds in regulated products and set maximum limits for PWMIR in regulated aerosol coating products. In this case, a quantification of the excess emissions attributable to the violations was practicable because WM Barr made the product formulation and sales data necessary to make this quantification available to CARB. Based upon this information (which WM Barr has designated as confidential), the violations were calculated to have 81.7 tons of excess VOC emissions, 8.4 tons of excess Aromatic Compounds emissions, and 5.2 tons of excess ozone formed.

- 32. 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.
- 33. The parties shall exchange signed copies of this Agreement. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement.
- 34. The undersigned certify that each has the full power and authority to enter into this Agreement and bind his or her respective entity and/or agency.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

W.M. Barr & Company, Inc.

By: /s/ _____

By: /s/ _____

Name: Richard W. Corey

Name: Scott Beal

Title: Executive Officer

Title: President

Date: 6/21/19

Date: 5/30/19