

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 Design Within Reach, Incorporated (DWR) with its principal place of business at 711 Canal Street, Stamford, Connecticut.

RECITALS

1. Pursuant to its authority in Health and Safety Code (H&SC) section 39666, in 2008 CARB adopted the Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products (ATCM) at title 17, California Code of Regulations (17 CCR), section 93120 et seq. This regulation requires that all manufacturers, distributors, importers, fabricators, and retailers of composite wood products and finished goods that contain composite wood products.
2. 17 CCR section 93120.2 (Emission Standards) sets a maximum formaldehyde emissions limit of 0.11 ppm for medium density fiberboard (MDF) sold, supplied, offered for sale, or manufactured for sale in California after January 1, 2011.
3. 17 CCR sections 93120.3 and 93120.5 through 93120.8 require reasonable prudent precautions to be taken to ensure composite wood products and composite wood products contained in finished goods comply with the Emission Standards specified in 17 CCR section 93120.2.
4. Failure to comply with the ATCM is a violation of state law subject to penalties up to \$10,000 for each day that the violation occurs, pursuant to H&SC section 39674.
5. CARB alleges that between September 1, 2014 and June 30, 2017, DWR engaged in twenty separate transactions in which it sold, in California, the Fin Juhl Credenza made of composite wood products, which are subject to the ATCM formaldehyde limit for MDF in 17 CCR section 93120.2.
6. CARB alleges that the subject product referenced in Recital paragraph 5 contained MDF that was procured from a mill that did not have a third party certification program and therefore does not meet the emission standard for MDF.
7. CARB alleges DWR failed to take reasonable prudent precautions to ensure that the subject products referenced in Recital paragraph 5 complied with 17 CCR section 93120.2.

8. CARB alleges that if the allegations described in Recitals paragraphs 5, through 7 were proven, civil penalties could be imposed against DWR as provided in H&SC section 39674 for each day in which each unit was offered for sale.
9. DWR admits the allegations described in Recitals paragraphs 5 through 7, but denies any liability resulting from said allegations.
10. 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. DWR 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 RELEASE

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

11. DWR shall not manufacture, distribute, import, fabricate or sell, or offer for sale for use in California, any composite wood products in violation of the ATCM set forth in 17 CCR section 93120, et seq.; the terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
12. DWR in settlement of the above-described violations of 17 CCR section 93120 et seq., agrees to pay a penalty to CARB in the amount of twenty five thousand dollars (\$25,000) payable to the California Air Pollution Control Fund, concurrent with the execution of this Agreement. Payment and the signed Agreement shall be mailed to the address specified on the Payment Transmittal Form enclosed with this Agreement.
13. This Agreement shall apply to and be binding upon DWR 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 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 DWR, 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 DWR concerning the claims and settlement in this Agreement. 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 DWR concerning these claims.
17. The effective date of this Agreement shall be the date upon which this Agreement is fully executed.
18. This Agreement is deemed to have been drafted equally by CARB and DWR; 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. Severability. 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.
21. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
22. 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).
23. **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 39674 and it is appropriate because DWR imported, distributed, and/or offered for sale composite wood products for commerce in California and did not use reasonable prudent precautions to ensure that the subject products complied with the ATCM, in violation of the ATCM adopted in 17 CCR section 93120 et seq.

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

CARB determined the settlement amount in consideration of all relevant circumstances, including the eight factors specified in the H&SC section 42403.

The per unit penalty in this case is a maximum of \$10,000 per day pursuant to H&SC section 39674. DWR was in violation for 20 days with an additional administrative penalty. The penalty in this case was reduced to \$1000 per day penalty and an administrative penalty because this was a first time violation and DWR cooperated with the investigation. In addition, DWR has taken steps to prevent non-compliant products from being sold by ensuring that the current version of the credenza contains only materials only from CARB certified mills, and discontinuing sales of the previous version that contained uncertified MDF. Penalties in future cases might be higher or lower on a daily basis based on relevant circumstances.

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.

A quantification of the excess emissions attributable to the violations was not practicable because the information necessary to do so, such as emissions rates and time of use, is not available.


24. DWR acknowledges that CARB has complied with H&SC section 39619.7 in prosecuting or settling this case. Specifically, CARB has considered all relevant facts, including those listed at H&SC section 42403 and 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that does not prohibit the emission of pollutants at a specified level.
25. The final penalty in this case was 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 harm to the environment considered together with the complete circumstances of this case.
26. The final penalty in this case was based in part on confidential financial information or confidential business information provided by DWR 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 DWR 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 DWR, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that DWR may have secured from its actions.


27. Now therefore, in consideration of the payment from DWR to the Air Pollution Control Fund, CARB hereby releases DWR and their principals, officers, agents, predecessors and successors from claims for violations of the ATCM set forth in 17 CCR section 93120, et seq., alleged in paragraphs 5 through 7 of the Recitals.
28. The undersigned represent that they have full power and authority to enter into this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

By: 
Name: Dr. Todd P. Sax
Title: Chief, Enforcement Division
Date: 3/12/19

Design Within Reach, Incorporated.

By: 
Name: Lorraine DiSanto
Title: CFO
Date: 3/1/19