

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the California Air Resources Board (ARB), with its principal office at 1001 I Street, Sacramento, California and O'Rourke Holdings, LLC (O'Rourke) with its principal place of business at 6166 Ramirez Canyon, Malibu, California.

RECITALS

1. California Code of Regulations (CCR), title 17, section 94509(a) (17 CCR section 94509(a)) specifies that no person shall sell, supply, offer for sale, or manufacture for sale in California, any consumer product containing volatile organic compound (VOC) content that exceed the specified limits.
2. 17 CCR section 94509(a) sets forth in the Table of Standards the percentage by weight VOC limit for Hair Styling Products: all other forms sold after December 31, 2006. Hair Styling Products: all other Forms must meet the 2.0 percent by weight VOC standard.
3. Failure to comply with the Consumer 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.
4. ARB alleges that between March 2013 thru December 2016, O'Rourke sold, supplied, and offered for sale in California, Rock You Hair Hard Gel that is subject to the 2 percent by weight VOC limit for Hair Styling Products: all other forms specified in 17 CCR section 94509(a).
5. ARB alleges that the Rock You Hair Hard Gel referenced in Recitals paragraph 4 contained concentrations of VOCs exceeding the 2.0 percent by weight VOC limit for the Hairstyling: all other forms category specified in 17 CCR section 94509(a).
6. ARB alleges that if the allegations described in Recitals paragraphs 4 and 5 were proven, civil penalties could be imposed against O'Rourke as provided in H&SC section 42402, et seq. for each and every unit involved in the violations.
7. O'Rourke admits the allegations described in recital 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. O'Rourke has taken or agrees to take, the actions enumerated below within the

Terms and Conditions. ARB accepts this Agreement in termination and settlement of this matter.

TERMS AND CONDITIONS

In consideration of ARB not filing a legal action against O'Rourke for the violations referred to above, ARB and O'Rourke agree as follows:

9. O'Rourke shall not manufacture, sell, supply or offer for sale for use in California any consumer products in violation of ARB 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. O'Rourke, in settlement of the above-described violation of 17 CCR section 94509(a) agrees to pay a penalty to ARB in the amount of three thousand dollars (\$3000) 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.
11. This Agreement shall apply to and be binding upon O'Rourke and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this settlement.
12. The parties stipulate that this Agreement shall be the final resolution of ARB claims regarding the above-described violation and shall have the same res judicata effect as a judgment in terms of acting as a bar to any civil action by ARB against O'Rourke, 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 Health and Safety Code (H&SC) section 42400.7(a).
13. 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.
14. This Agreement constitutes the entire agreement and understanding between ARB and O'Rourke concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between the ARB and O'Rourke concerning these claims.

15. The Effective Date of this Agreement shall be the date upon which it is fully executed.
16. This Agreement is deemed to have been drafted equally by ARB and O'Rourke; it will not be interpreted for or against either Party on the ground that said Party drafted it.
17. 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.
18. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
19. **Penalty Determination**

H&SC section 39619.7 requires ARB 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 O'Rourke 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 of the H&SC.

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 \$10,000 per day penalties for strict liability violations of the Consumer Products Regulations, with each day being a separate violation. In cases like this, involving unintentional violations of the Consumer Products Regulations where there are low VOC emissions and the violator cooperates with the investigation, ARB has obtained penalties based on at least three days of violations (the day the product was purchased by ARB, the day it was supplied to the retailer, and the day it was manufactured for sale). Investigative costs and an administrative penalty are also obtained in some cases.

In this case, the total penalty is \$3000, and there were 3.6 pounds of excess VOC emissions attributable to the violation.

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 violations was practicable because O'Rourke made the product formulation and sales data necessary to make this quantification available to ARB. Based on this information (which O'Rourke has designated as confidential), the violations were calculated to have 3.6 pounds of excess VOC emissions emitted 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 costs 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 O'Rourke that is not retained by ARB in the ordinary course of business. Additionally, the penalty in this case was based on confidential settlement communications between ARB and O'Rourke that ARB does not retain in the ordinary course of business. The penalty reflects ARB's assessment of the relative strength of its case against O'Rourke, the desire to avoid the uncertainty, burden, and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that O'Rourke may have secured from its actions.

20. 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. 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: 8/7/17

O'Rourke Holdings, LLC

By: 
Name: NICOLE O'ROURKE
Title: CEO
Date: 8/3/2017