

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 Prozone Water Products, Incorporated (Prozone) with its principal place of business at 3004 11th Avenue, Huntsville, Alabama.

RECITALS

1. The Regulation for Limiting Ozone Emissions from Indoor Air Cleaning Devices, title 17, California Code of Regulations, section 94800 et seq. (17 CCR section 94800 et seq.) applies to any person who sells, supplies, offers for sale, or manufactures indoor air cleaners for use in occupied spaces in California.
2. No person shall manufacture for use in California or sell, supply, offer for sale, or introduce into commerce, any indoor air cleaning device for use or intended for use in occupied spaces unless the device is certified by CARB to produce an ozone emission concentration not exceeding 0.050 ppm, as stated in 17 CCR section 94802.
3. Any indoor air cleaning device subject to 17 CCR section 94802 that is advertised or sold via the Internet or by catalog but that has not been certified according to section 94804 must display the following advisory in a prominent place on the primary web pages, catalog pages, and related materials where such device is advertised or displayed for sale: "Does not meet California requirements; cannot be shipped to California" as stated in 17 CCR section 94806(e).
4. Failure to comply with the Indoor Air Cleaner 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.
5. CARB alleges that Prozone sold, supplied, and offered for sale in California the uncertified Prozone Twister indoor air cleaner model which is a violation of 17 CCR section 94802.
6. CARB alleges that Prozone advertised for sale on the internet the uncertified Prozone Twister indoor air cleaner without displaying the required advisory "Does not meet California requirements; cannot be shipped to California" which is a violation of 17 CCR section 94806(e).
7. CARB alleges that if the allegations described in Recitals paragraphs 5 and 6 were proven, civil penalties could be imposed against Prozone as provided in H&SC section 42402 et seq. for each and every unit involved in the violations.

8. Prozone does not admit to the allegations described in Recitals paragraphs 5 and 6, and denies any liability resulting from said allegations.
9. 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 Agreement, without the need for formal litigation. Prozone 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 CONDITIONS

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

10. Prozone shall not manufacture, sell, supply, or offer for sale in California, any indoor air cleaning devices in violation of the California Indoor Air Cleaner Regulation, set forth in 17 CCR section 94800 et seq.; the terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
11. Prozone, in settlement of the above-described violations of 17 CCR section 94800 et seq., agrees to pay a penalty to CARB in the amount of \$6,000 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.
12. This Agreement shall apply to and be binding upon Prozone 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.
13. 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 Prozone, 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).
14. 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.

15. This Agreement constitutes the entire agreement and understanding between CARB and Prozone 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 Prozone concerning these claims.
16. The Effective Date of this Agreement shall be the date upon which it is fully executed.
17. This Agreement is deemed to have been drafted equally by CARB and Prozone; it will not be interpreted for or against either Party on the ground that said Party drafted it.
18. 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.
19. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
20. 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).
21. **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 Prozone sold, supplied, offered for sale, or manufactured for sale in California uncertified indoor air cleaning devices in violation of the Indoor Air Cleaner Regulation (17 CCR section 94800 et seq.). The penalty provisions of H&SC section 42402 et seq. apply to violations of the Indoor Air Cleaner Regulation because the regulation was adopted under authority of H&SC section 41985, 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.

Penalties must be set at levels sufficient to discourage violations. ARB considered all relevant circumstances in determining penalties, including the eight factors specified in H&SC section 42403.

Under H&SC section 42402, et seq. the penalties for strict liability violations of the Indoor Air Cleaner Regulation are a maximum of \$10,000 per day of violation, with each day being a separate violation.

The \$6,000 penalty obtained in this case represents six days of violation. Prozone, to come into compliance, ceased sales of the non-compliant model and posted the required consumer warning on their website.

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 unit basis.

The final penalty in this case was based in part on confidential financial information or confidential business information provided by Prozone 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 Prozone 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 Prozone, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Prozone 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 Indoor Air Cleaner Regulation prohibits emissions of ozone pollution above a specific level. However, it is not practicable to quantify the amount of excess emissions because the number of hours that the uncertified units involved were in use is unknown. However, since the air cleaners were not certified for sale in California, CARB asserts that all emissions from them are excess and illegal.

22. 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.
23. 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.

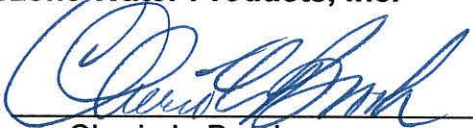
24. The undersigned represent that they have full power and authority to enter into this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

By: 
Name: Dr. Todd P. Sax
Title: Enforcement Division Chief
Date: 3/11/19

Prozone Water Products, Inc.

By: 
Name: Cherie L. Brook
Title: President
Date: 2/12/2019