

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 The Sherwin-Williams Company (Sherwin-Williams) with its principal place of business at 101 West Prospect Avenue, Cleveland, Ohio.

RECITALS

1. The Consumer Products Regulation, title 17, California Code of Regulations (17 CCR) section 94507 et seq. section 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. Table 94509(n)(1) in 17 CCR section 94509 sets forth the product categories in which use of any chemical compound that has a Global Warming Potential (GWP) value of 150 or greater is prohibited. Effective January 1, 2016, no person shall sell, supply, offer for sale, or manufacture for use in California any aerosol multi-purpose solvents that contains any chemical compound that has a GWP value of 150 or greater.
4. 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 Clear Coating category must meet the Reactivity Limit of 0.85 grams of ozone formed per gram of product after January 1, 2017. 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.
5. 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.
6. CARB alleges that Sherwin-Williams manufactured, sold, supplied, and offered for sale in California, Dupli-Color Prep Spray that is subject to the GWP prohibition limit for the aerosol multi-purpose solvent category specified in 17 CCR section 94509(n).

7. CARB alleges that the Dupli-Color Prep Spray product referenced in Recitals paragraph 6 contained 1,1,1,2-tetrafluoroethane (HFC-134a), which has a GWP value of 1300 that is greater than the 150 GWP limit for the aerosol multi-purpose solvent category specified in 17 CCR section 94509(n).
8. CARB alleges that Sherwin-Williams manufactured, sold, supplied, and offered for sale in California, Krylon Triple-Thick Clear Glaze, Krylon Ultra UV Floral Protectant, Krylon UV-Resistant Clear (Gloss), Krylon UV-Resistant Clear (Matte), and Krylon Satin Finish that are subject to the Reactivity Limit for the Clear Coating category specified in 17 CCR section 94522(a)(2).
9. CARB alleges that the Krylon Triple-Thick Clear Glaze, Krylon Ultra UV Floral Protectant, Krylon UV-Resistant Clear (Gloss), Krylon UV-Resistant Clear (Matte), and Krylon Satin Finish products referenced in Recitals paragraph 8 had PWMIR values that exceeded the Reactivity Limit for the Clear Coating category specified in 17 CCR section 94522(a)(2).
10. CARB alleges that Sherwin-Williams sold, supplied, and offered for sale in California, Dupli-color Adhesion Promoter that is subject to the Reactivity Limit for the Auto Body Primer category specified in 17 CCR section 94522(a)(2).
11. CARB alleges that the Dupli-color Adhesion Promoter product referenced in Recitals paragraph 10 had a PWMIR value that exceeded the Reactivity Limit for the Auto Body Primer category specified in 17 CCR section 94522(a)(2).
12. CARB alleges that if the allegations described in Recitals paragraphs 6, 7, 8, 9, 10, and 11 were proven, civil penalties could be imposed against Sherwin-Williams as provided in H&SC section 42402 et seq. for each and every unit involved in the violations.
13. Sherwin-Williams admits the allegations described in Recitals paragraphs 6, 7, 8, 9, 10, and 11, but denies any liability resulting from said allegations.
14. In consideration of the foregoing, and of the promises and allegations 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. Sherwin-Williams has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. CARB accepts this Agreement in termination and settlement with respect to any of the allegations made in this matter.
15. Nothing contained herein shall be considered an admission of liability by Sherwin-Williams.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against Sherwin-Williams for the alleged violations referred to above in the Recitals, and Sherwin-Williams's payment of the penalties and funding of the Supplemental Environmental Project (SEP) set forth below, CARB and Sherwin-Williams agree as follows:

16. Sherwin-Williams shall not sell, supply, offer for sale, or manufacture for use in the state of California, any consumer products in violation of the California 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.
17. Sherwin-Williams has agreed to undertake a SEP as described in Attachment B – SUPPLEMENTAL ENVIRONMENTAL PROJECT AGREEMENT – Kettleman City Asthma Intervention Program SEP (SEP Agreement), to offset a portion of the penalty, consistent with CARB's SEP Policy. Pursuant to this Agreement, Sherwin-Williams shall make payments according to the schedule below.
18. Sherwin-Williams has agreed that by funding the Kettleman City Asthma Intervention Program SEP, they will not receive any direct or indirect financial benefit, and that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of a CARB enforcement action.
19. Upon agreeing to the terms set forth in the SEP Agreement, and funding the Kettleman City Asthma Intervention Program SEP, Sherwin-Williams is released of all liabilities as they relate to the Kettleman City Asthma Intervention Program SEP as reflected in this underlying Settlement Agreement.
20. In the event the SEP is not fully implemented in accordance with the terms of the SEP Agreement, CARB (as the third party beneficiary) shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount waived based 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, Sherwin-Williams assigns any and all rights against the SEP implementer to CARB. In no event shall Sherwin-Williams be liable to CARB or any third-party regarding the performance of the SEP by the Central California Asthma Collaborative.
21. Upon execution of this Agreement, Sherwin-Williams shall pay a civil penalty and fund Kettleman City Asthma Intervention Program in the total combined amount of two hundred twenty thousand dollars (\$220,000). Payment shall be made in two payments as described below.

Payment Due Date:	In the Amount of and Payable to:	
Within thirty (30) days of execution of this Agreement	\$155,000	Air Pollution Control Fund
	\$65,000	Central California Asthma Collaborative

The signed settlement agreement and any future mailings or documents per the terms of this Settlement Agreement shall be mailed to:

Ms. Penny Fong
 Air Pollution Specialist
 California Air Resources Board
 Enforcement Division
 P.O. Box 2815
 Sacramento, California 95812

For payments made to the Air Pollution Control Fund, please send the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

California Air Resources Board
 Accounting Office
 P.O. Box 1436
 Sacramento, California 95812-1436

For payments made to the Central California Asthma Collaborative, please send the payment along with the attached "Supplemental Environmental Project Payment Transmittal Form" (Attachment A - 2) to:

Central California Asthma Collaborative
 For: Kettleman City Asthma Intervention Program
 4991 E. McKinley Ave. Suite 109
 Fresno, California 93727

In addition, a copy of each payment check made to Central California Asthma Collaborative shall be mailed to:

Ms. Penny Fong
 Air Pollution Specialist
 California Air Resources Board
 Enforcement Division
 P.O. Box 2815
 Sacramento, California 95812

22. Effect of Untimely Payment. If any payment is more than fifteen (15) days late, the entire remaining balance becomes immediately due and payable. In

addition, if the Attorney General files a civil action to enforce this settlement agreement, Sherwin-Williams shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

23. This Agreement shall apply to and be binding upon Sherwin-Williams 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.
24. The parties stipulate that this Agreement shall be the final resolution of CARB claims regarding the above-described alleged 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 Sherwin-Williams, 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).
25. 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.
26. This Agreement constitutes the entire agreement and understanding between CARB and Sherwin-Williams 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 Sherwin-Williams concerning these claims.
27. The Effective Date of this Agreement shall be the date upon which it is fully executed.
28. This Agreement is deemed to have been drafted equally by CARB and Sherwin-Williams; it will not be interpreted for or against either Party on the ground that said Party drafted it.
29. 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.
30. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
31. 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).

32. **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 Sherwin-Williams 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 VOCs, use of high GWP compounds, and excess PWMIR values. Administrative penalties are also obtained in some cases.

In this case, the total penalty is \$220,000 for the use of a high GWP compound and Reactivity Limit violations. The per-unit penalty was based on 1.42 tons of HFC-134a emissions and 16.28 tons of excess ozone formed. The penalty in this case was reduced because Sherwin-Williams made diligent efforts to comply and cooperate with the investigation, including but not limited to: modifying products to meet regulations, which includes marketing materials; discontinuing or postponing the sale of certain products in California; and a comprehensive review of aerosol coating products for compliance with applicable rules.

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 Sherwin-Williams 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 Sherwin-Williams 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 Sherwin-Williams, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Sherwin-Williams 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 prohibit the use of HFC-134a in specific consumer product categories 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 Sherwin-Williams made the product formulation and sales data necessary to make this quantification available to CARB. Based upon this information (which Sherwin-Williams has designated as confidential), the violations were calculated to have 1.42 tons of HFC-134a emissions and 16.28 tons of excess ozone formed in California.

33. 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.
34. 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.
35. The undersigned represent that they have full power and authority to enter into this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

By: /s/

Name: Richard W. Corey

Title: Executive Officer

Date: 8/20/2019

The Sherwin-Williams Company

By: /s/

Name: Daniel Scalabrino

Title: SVP, Finance

Date: 7/16/2019