

## **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 Walgreen Co. (Walgreens), with its principal place of business at 200 Wilmot Road, Deerfield, Illinois, 60015.

### **RECITALS**

1. The Consumer Products Regulation, title 17, California Code of Regulations section 94500 et seq. (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. 17 CCR section 94509(a) sets forth in the Table of Standards the percentage by weight of allowed volatile organic compounds (VOC) for the Lubricant: Multi-Purpose consumer product category sold after December 31, 2013. Multi-Purpose Lubricants must meet the 25 percent standard for VOC.
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. CARB alleges that Walgreens sold, supplied, and offered for sale in California, WD-40 Multi-Use Product that is subject to the VOC limit for the Multi-Purpose Lubricant category specified in 17 CCR section 94509(a).
5. CARB alleges that the WD-40 Multi-Use Product referenced in Recital paragraph 4 contained concentrations of VOC exceeding the 25 percent by weight VOC limit for the Multi-Purpose Lubricant category specified in 17 CCR section 94509(a).
6. CARB alleges that if the allegations described in recital paragraphs 4 and 5 were proven, civil penalties could be imposed against Walgreens as provided in H&SC sections 42402 et seq. for each and every unit involved in the violations.
7. Walgreens 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 completely by means of this Agreement, without the need for formal litigation.

9. Walgreens 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 dismissing its action against Walgreens for the violations referred to above, CARB and Walgreens agree as follows:

10. Walgreens, in settlement of the above described violation of 17 CCR section 94507 et seq., agrees to pay a penalty to CARB in the amount of eighty thousand dollars (\$80,000) payable to the California Air Pollution 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. The Attorney General shall, upon execution of this agreement and payment by Walgreens, dismiss with prejudice, the Complaint in the Superior Court County of Sacramento entitled *People of the State of California Ex Rel. State Air Resources Board v Walgreen Co., Walgreen National Corporation and Does 1-20 Case No. 34-2018-00244759*.
12. Walgreens shall not manufacture, sell, supply, or offer for sale for use in California any consumer products in violation of California Consumer Product Regulations set forth in Title 17, CCR, Section 94500 et seq. however, the terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
13. This Agreement shall apply to and be binding upon Walgreens and its officers, directors, receivers, trustees, employees, successors, assignees, subsidiary, parent and affiliate corporations and entities, 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 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 Walgreens, its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary, parent and affiliate 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 Walgreens 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 CARB and Walgreens concerning these claims.
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. The Effective Date of this Agreement shall be the date upon which it is fully executed.
19. This Agreement is deemed to have been drafted equally by CARB and Walgreens; it will not be interpreted for or against either Party on the ground that said Party drafted it.
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 Walgreens manufactured, sold, supplied, or offered 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.**

Penalties must be set at levels sufficient to discourage violations. ARB considered all relevant circumstances in determining penalties, including the eight factors specified in HSC section 42403. Those circumstances were considered together with the need to remove any economic benefit from

noncompliance, the goal of deterring future violations and obtain swift compliance, penalty sought in other cases, and the potential cost and risk associated with litigating these particular violations. H&SC section 42402, et seq. provides for 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 emission of VOCs. Administrative penalties are also obtained in some cases.

In this case, the total penalty is \$80,000.00 for emission violations. The per-unit penalty was based on no greater than 0.159 tons of excess VOC emissions. The penalty in this case is based on CARB's consideration of Walgreens' past violations, although no previous violations involved the category of Multi-Purpose Lubricant being sold to California consumers.

Final penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from non-compliance, the goal of deterring future violations and obtaining swift compliance, the considerations 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 potential 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 Walgreens 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, its lawyers and Walgreens and its lawyers, that CARB does not retain in the ordinary course of business. The penalty also reflects CARB's assessment of the relative strengths and weaknesses of its case against Walgreens, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Walgreens 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 the excess emissions, if it is practicable to do so.**


The Consumer Product Regulations do not prohibit emissions above a specific 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 Walgreens provided sales data and product formulation data was obtained from the manufacturer, WD-40. Based upon

this information, the violations were calculated to have caused no greater than 0.159 tons of excess VOC emissions emitted in California.

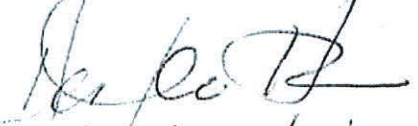
22. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid, or unenforceable in any jurisdiction the remainder of this Agreement remains in full force and effect.
23. The Parties shall exchange signed copies of this Agreement. Emailed or photocopied signatures shall be considered as valid signature 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: Ellen M. Peter  
Title: Chief Counsel  
Date: 5/17/2019

**WALGREEN CO.**

By:   
Name: Heather Hughes  
Title: GMM/GRP  
Date: 4/23/19