

## 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 Wal-Mart Stores Inc. (Wal-Mart) with its principal place of business at 702 S.W. 8th Street, Bentonville, Arkansas.

### RECITALS

1. ARB alleges that from December 2011 through March 2013, Wal-Mart sold, supplied, and offered for sale in California their imported private label branded Backyard Grill Disposable BBQ product that at the time of the transaction the manufacturer or distributor of the product had not been issued a currently effective certification in violation of Title 17 CCR, Section 94509(h)(1)(A).
2. ARB alleges that Wal-Mart is in violation of Title 17 CCR, Section 94512(b), for not clearly displaying on each consumer product container or package, the day, month, and year on which the product was manufactured, or a code indicating such date.
3. ARB alleges that if the allegations described in recital paragraphs 1 and 2 were proven, civil penalties could be imposed against Wal-Mart as provided in Health and Safety Code sections 42402 et seq. for each and every unit involved in the violations.
4. Wal-Mart admits the violations described in recital paragraphs 1 and 2, but denies any liability resulting from them.
5. The parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

Therefore, the parties agree as follows:

### TERMS AND CONDITIONS

1. Wal-Mart shall not sell, supply or offer for sale for use in California any consumer product in violation of ARB's Consumer Products 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.
2. Wal-Mart in settlement of the above-described violations agrees to pay a penalty to ARB in the amount of \$34,000.00 payable to the California Air Resources Board, concurrent with the execution of this Agreement.

3. This settlement shall apply to and be binding upon Wal-Mart 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.
4. The parties stipulate that this Agreement shall be the final resolution of ARB's claims regarding the above-described violations and shall have the same res judicata effect as a judgment in terms of acting as bar to any civil action by ARB against Wal-Mart, 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 section 42400.7(a).
5. 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.
6. This Agreement constitutes the entire agreement and understanding between ARB and Wal-Mart 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 Wal-Mart concerning these claims.
7. 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.
8. Each of the undersigned represents and warrants that he or she has full power and authority to enter into this Agreement.
9. **SB 1402 Statement.** California Health and Safety Code (HSC) section 39619.7 (Senate Bill 1402 - Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks. This Settlement 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 provisions being applied in this case is HSC section 42402, et seq. because Wal-Mart sold, supplied, offered for sale, or manufactured for sale consumer products for commerce in California in violation of ARB's Consumer Product Regulations Title 17 CCR 94500, 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.**

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.

Under HSC section 42402, et seq. the penalties for strict liability violations of the Consumer Product Regulations are a maximum of \$1,000 per day of violation, with each day being a separate violation. In cases like this involving an unintentional second violation of the Consumer Products Regulation, ARB has sought and obtained penalties of approximately 3 times the rate for similar first time violations (3 times \$10,000 for failure to certify a product). In addition, the ARB has sought and obtained additional penalties for procedural violations (product dating) and for the costs of the investigation. In this case, the total penalty is \$34,000. Penalties in future cases might be smaller or larger on a per ton basis.

**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 penalty is based on a second failure to certify a product with the ARB, therefore, a quantification of excess emissions is not practicable.

10. Wal-Mart acknowledges that ARB has complied with SB1402 in investigating and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 42403, 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 while this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level, if it is practicable for ARB to quantify the excess emissions from the alleged violations, has done so and has included this information in this Settlement Agreement.
11. 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 listed above. Penalties in future cases might be smaller or larger on a per ton basis.

12. The final penalty in this case was based in part on confidential business information provided by Wal-Mart that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and Wal-Mart that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against Wal-Mart, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Wal-Mart may have secured from its actions.

CALIFORNIA AIR RESOURCES BOARD

Dated: 11/21/2013

By:   
Ellen M. Peter  
Chief Counsel

WAL-MART STORES, INC.

Dated: 11-4-13

By:   
Rick Hays  
Vice President of Outdoor Living