

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 26 California Wholesale (26 CA) with its principal place of business at 2845 East 26th Street, Vernon, California.

RECITALS

1. Health and Safety Code (H&SC) section 41712 mandates the reduction of Volatile Organic Compounds (VOC) from consumer products. ARB adopted Consumer Product Regulations in phases under title 17, California Code of Regulations (CCR) section 94507, et seq., which includes the Charcoal Lighter Material category.
2. Title 17, CCR, section 94509 (a) specifies that the Consumer Product Regulation applies to any person who sells, supplies, offers for sale, or manufactures for sale in California any consumer product containing VOCs.
3. Title 17, CCR, section 94509 (h) sets forth the regulatory standards and certification requirements for charcoal lighter materials.
4. Failure to comply with the Consumer Products Regulation is a violation of State Law resulting in penalties. Among other penalties, H&SC sections 42400-42403 authorize strict liability penalties up to \$10,000.00 for each day that the violation occurs.
5. ARB alleges that in August 2014, 26 CA purchased and imported the Instant Grill Ready-To-Use Disposable Grill 500 Grams and Instant Grill Ready-To-Use Disposable Grill 1000 Grams products from a Chinese manufacturer, Shenzhen Hongchao International Ltd. ARB further alleges that 26 CA subsequently sold these two types of products to California Grocery Outlet stores and to other California retailers. The Instant Grill Ready-To-Use Disposable Grill 500 Grams and Instant Grill Ready-To-Use Disposable Grill 1000 Grams products are subject to the regulatory standards and certification requirements for the "Charcoal Lighter Material" category specified in Title 17, CCR, sections 94507-94517.
6. ARB alleges that the Instant Grill Ready-To-Use Disposable Grill 500 Grams and Instant Grill Ready-To-Use Disposable Grill 1000 Grams products referenced in Recitals paragraph 5 did not possess an Executive Order certifying the charcoal light material formulation as specified in Title 17, CCR, section 94509 (h).
7. ARB alleges that the Instant Grill Ready-To-Use Disposable Grill 500 Grams and Instant Grill Ready-To-Use Disposable Grill 1000 Grams products referenced in

recital paragraphs 5 did not display the date of manufacture specified in Title 17, CCR, section 94512 (b).

8. ARB alleges that if the allegations described in recital paragraphs 5, 6, and 7 were proven, civil penalties could be imposed against 26 CA, as provided in H&SC sections 42402, et seq. for each and every unit involved in the violations.
9. 26 CA admits the allegations described in recital paragraphs 5, 6, and 7, but denies any liability resulting from said allegations.
10. 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. 26 CA 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 26 CA for the violations referred to above, ARB and 26 CA agree as follows:

11. 26 CA 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 title 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.
12. 26 CA in settlement of the above-described violations of Title 17, CCR, section 94509(a) agrees to pay a penalty to ARB in the amount of \$9,750.00 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 in the Payment Transmittal Form attached to this Agreement.
13. This Agreement shall apply to and be binding upon 26 CA 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.
14. The parties stipulate that this Agreement shall be the final resolution of ARB 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 ARB against 26 CA, 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).

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 ARB and 26 CA 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 26 CA concerning these claims.
17. The Effective Date of this Agreement shall be the date upon which it is fully executed.
18. This Agreement is deemed to have been drafted equally by ARB and 26 CA; it will not be interpreted for or against either Party on the ground that said Party drafted it.
19. 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.
20. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
21. **1402 Statement.** 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 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 HSC section 42402, et seq. because 26 CA sold, supplied, offered for sale, or manufactured for sale consumer products for commerce in California in violation of the Consumer Products Regulations (title 17, CCR, section 94507, et seq.). The penalty provisions of HSC section 42402, et seq. apply to violations of the Consumer Products Regulations because the regulations were adopted under authority of HSC section 41712 which is in Part 4 of Division 26 of the HSC.

The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit or per vehicle basis for the penalty.

HSC section 42402, et seq. provides \$1,000 per day penalties for strict liability violations of the Consumer Products Regulations, with each day being a separate

violation. In cases like this, involving an unintentional first violation of the Consumer Products Regulations where there are low VOC emissions and the violator cooperates with the investigation, the ARB has obtained penalties of approximately \$10,000 for failure to certify a product. In addition, the ARB has sought and obtained administrative penalties of \$3,000 for a procedural violation, in this case a date code violation.

In this case the total penalty is \$9,750. The penalty in this case was reduced because this was a first time violation and 26 CA made diligent efforts to comply and to cooperate with the investigation. Penalties in future cases might be higher or lower on a per ton or per day 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 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 not practicable because this case is based on a failure to certify a product and a failure to display the date of manufacture.

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. 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 26 CA 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 26 CA that ARB does not retain in the ordinary course of business. The penalty also reflects ARB's assessment of the relative strength of its case against 26 CA, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that 26 CA may have secured from its actions.

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

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

By: 

Dr. Todd P. Sax, Chief
Enforcement Division

Date: 9/21/16

26 California Wholesale

By: 

Name: ROBERT FRIEDLAND
Title: PRESIDENT

Date: 9/1/2016