

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 Best Choice Products, Incorporated (BCP) with its principal place of business at (15101 Red Hill Avenue, Tustin, California).

RECITALS

1. The Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products (ATCM) title 17, California Code of Regulations (17 CCR), section 93120 et seq. applies to any person that manufacturers, imports, fabricates, supplies, offers for sale, or sells composite wood products and finished goods that contain composite wood products for use in California.
2. 17 CCR section 93120.2 (Emission Standards) sets a maximum formaldehyde emissions limit of 0.11 ppm for medium density fiberboard (MDF) sold, supplied, offered for sale, or manufactured for sale in California after January 1, 2011.
3. 17 CCR sections 93120.6 and 93120.8 require reasonable prudent precautions to be taken to ensure composite wood products and composite wood products contained in finished goods comply with the Emission Standards specified in 17 CCR section 93120.2.
4. Failure to comply with the ATCM is a violation of state law subject to penalties up to \$10,000 for each day that the violation occurs, pursuant to H&SC section 39674.
5. CARB alleges that between November 3, 2016 and May 1, 2018, BCP engaged in three hundred fifty two separate transactions in which it sold L-Shaped Corner Computer Office Desk model #SKY2680 that is subject to the ATCM formaldehyde limit for MDF in 17 CCR section 93120.2.
6. CARB alleges that the subject products referenced in Recital paragraph 5 contained concentrations of formaldehyde exceeding the 0.11 ppm limit for MDF in violation of 17 CCR section 93120.2.
7. CARB alleges BCP failed to take reasonable prudent precautions to ensure that the subject products referenced in Recital paragraph 5 complied with 17 CCR section 93120.2.
8. CARB alleges that if the allegations described in Recitals paragraphs 5 through 7 were proven, civil penalties could be imposed against BCP as provided in H&SC section 39674 for each day in which each unit was offered for sale.

9. BCP admits the allegations described in Recitals paragraphs 5 through 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. BCP 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 RELEASE

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

11. BCP shall not manufacture, distribute, import, fabricate or sell, or offer for sale for use in California, any composite wood products in violation of the ATCM set forth in 17 CCR section 93120, et seq.; the terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
12. BCP shall pay a civil penalty and agrees to fund a SEP entitled Asthma Impact Model for Fresno County in the total amount of one hundred fifty thousand three hundred four dollars (\$150,304.00 USD) in full. BCP shall pay eighty-four thousand one hundred seventy-five dollars (\$84,175.00 USD) into the Air Pollution Control Fund within 30 calendar days from full execution of the Agreement.
13. BCP agrees to pay a partial of the penalty, in the amount of sixty-six thousand one hundred twenty-nine dollars (\$66,129.00 USD) to undertake a SEP entitled Asthma Impact Model for Fresno County as described in the SEP Summary consistent with CARB's SEP Policy within 30 calendar days from full execution of the Agreement.
14. BCP agree to pay by check, credit card, wire transfer, or portal, using instructions provided separately by CARB in a Payment Transmittal Form. Payments shall be made to the address that correlates to the payment method elected, and shall be accompanied by the Payment Transmittal Form to ensure proper application:

For payments made by check or credit card, mail to:

California Air Resources Boards

Accounting Branch
P.O. Box 1436
Sacramento, CA 95812-1436

For payments made by wire transfer:

State of California Air Resources Board
c/o Bank of America, Inter Branch to 0148
Routing No. 0260-0959-3 Account No. 01482-80005
Reference: CW18-10-07

For payments made via the first Data payment portal:

Information to assist you with making online payments via the First Data payment portal is available at this link on CARB's website:
<https://ww2.arb.ca.gov/payments>

15. Within 30 business days following notice from CARB that the Agreement has been signed by all parties, BCP shall pay \$66,129.00 USD by wire transfer or check payable to the SEP implementer/recipient, Central California Asthma Collaborative using instructions provided separately by Central California Asthma Collaborative. For payment to the SEP implementer, BCP shall send the payment to:

Central California Asthma Collaborative

Asthma Impact Model for Fresno County
4991 East McKinley Avenue, Suite 109
Fresno, California 92727

16. BCP shall promptly email and then mail the original signed and dated Agreement, with copy of proof of payment of the penalty and a copy of the Payment Transmittal Form to:

California Air Resources Board
Attention: Juan Delgado
Consumer Products Enforcement Section
P.O. Box 2815
Sacramento, California 95812

17. BCP has agreed that by funding the SEP, BCP will not receive any direct or indirect financial benefit, and that whenever BCP publicizes or refers to the SEP or the results of the SEP, BCP will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.

18. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended 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, BCP assigns any and all rights against the SEP implementer to CARB.
19. This Agreement shall apply to and be binding upon BCP 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.
20. 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 BCP, 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).
21. 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.
22. This Agreement constitutes the entire agreement and understanding between CARB and BCP concerning the claims and settlement in this Agreement. 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 BCP concerning these claims.
23. The effective date of this Agreement shall be the date upon which this Agreement is fully executed.
24. This Agreement is deemed to have been drafted equally by CARB and BCP; it will not be interpreted for or against either Party on the ground that said Party drafted it.
25. 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.
26. Severability. 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.

27. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
28. 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).

29. **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 39674 and it is appropriate because BCP imported and/or offered for sale composite wood products with formaldehyde emissions above the standards for commerce in California, and did not use reasonable prudent precautions to ensure that the subject products complied with the ATCM, in violation of the ATCM adopted in 17 CCR section 93120 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.

CARB determined the settlement amount in consideration of all relevant circumstances, including the eight factors specified in the H&SC section 42403.

The per unit penalty in this case is a maximum of \$10,000 per day pursuant to H&SC section 39674. BCP was in violation for 352 days. The penalty in this case was reduced to \$427 per day penalty because this was a first time violation and BCP cooperated with the investigation. In addition, BCP implemented new procedures when purchasing and receiving products to prevent non-compliant products being sold, which included annual testing. Penalties in future cases might be higher or lower on a daily basis based on relevant circumstances.

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 ATCM prohibits formaldehyde emissions above a specified concentration limit in regulated products. CARB alleges in Recital 5 that certain products sold by BCP contained concentrations of formaldehyde exceeding the 0.11 ppm limit for MDF in 17 CCR section 93120.2. In this case, a quantification of the excess emissions attributable to the violations was not practicable because the

information necessary to do so, such as emissions rates and time of use, is not available.

30. BCP acknowledges that CARB has complied with H&SC section 39619.7 in prosecuting or settling this case. Specifically, CARB has considered all relevant facts, including those listed at H&SC section 42403 and 43024, 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 this penalty is being assessed under a provision of law that does not prohibit the emission of pollutants at a specified level.
31. The final penalty in this case was 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 harm to the environment considered together with the complete circumstances of this case.
32. The final penalty in this case was based in part on confidential financial information or confidential business information provided by BCP 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 BCP 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 BCP, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that BCP may have secured from its actions.
33. Now therefore, in consideration of the payments from BCP to the Air Pollution Control Fund and SEP payment CARB hereby releases BCP and their principals, officers, agents, predecessors and successors from claims for violations of the ATCM set forth in 17 CCR section 93120, et seq., alleged in paragraphs 5 through 7 of the Recitals. Upon funding the SEP entitled Asthma Impact Model for Fresno County, BCP is released of liabilities as they relate to implementation of the SEP for Central California Asthma Collaborative.
34. 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: 4/22/2020

Best Choice Products, Incorporated

By: _____ /S/
Name: Benjamin Shidla
Title: President / CEO
Date: 4/2/2020