

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 Hoyu America Company (Hoyu) with its principal place of business at 6265 Phyllis Drive, Cypress, California.

RECITALS

1. The Consumer Product Regulation, title 17, California Code of Regulations, section 94507 et seq. (17 CCR section 94507 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 for Hair Styling Products: Aerosol and Pump Spray sold after December 31, 2006. Hair Styling Products: Aerosol and Pump Spray must meet the 6 percent standard for volatile organic compounds (VOC). 17 CCR Section 94509(a) also sets forth in the Table of Standards the percentage by weight for Hair Finishing Spray sold after June 1, 1999. Hair Finishing Spray must meet the 55% standard for VOCs.
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. ARB alleges that Hoyu sold, supplied, or offered for sale in California, Fat Hair Amplifying Hair Spray that is subject to the VOC limit for Hairstyling Products: Aerosol and Pump Spray in specified 17 CCR section 94509(a).
5. ARB alleges that the Fat Hair Amplifying Hair Spray product referenced in Recitals paragraph 4 contained concentrations of VOCs exceeding the 6 percent VOC limit for Hairstyling Products: Aerosol and Pump Spray category specified in 17 CCR section 94509(a).
6. ARB alleges that if the allegations described in Recitals paragraphs 4 and 5 were proven, civil penalties could be imposed against Hoyu as provided in H&SC section 42402 et seq.
7. Hoyu neither admits the allegations described in Recitals paragraphs 4 and 5 nor admits any liability resulting from said allegations. Hoyu contends that the Fat Hair Amplifying Hair Spray is a Hair Finishing Spray, that the Hair Spray falls within the 55% VOC limit for such product category per 17 CCR Section

94509(a), and that the Hair Spray is therefore not in violation and no penalty can be assessed.

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 by means of this Agreement, without the need for formal litigation. Hoyu 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 Hoyu for the alleged violations referred to above, ARB and Hoyu agree as follows:

9. Hoyu 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 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.
10. Hoyu, in settlement of the above-described alleged violations of 17 CCR section 94507 et seq., agrees to pay a settlement to ARB in the amount of \$110,000 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 on the Payment Transmittal Form enclosed with this Agreement.
11. This Agreement shall apply to and be binding upon Hoyu 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.
12. The parties stipulate that this Agreement shall be the final resolution of ARB 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 ARB against Hoyu, 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).

13. 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.
14. This Agreement constitutes the entire agreement and understanding between ARB and Hoyu 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 ARB and Hoyu concerning these claims.
15. The Effective Date of this Agreement shall be the date upon which it is fully executed.
16. This Agreement is deemed to have been drafted equally by ARB and Hoyu; it will not be interpreted for or against either Party on the ground that said Party drafted it.
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. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
19. It is further agreed that the stipulated settlement amount described in this Agreement is non-dischargeable under United States Code, title 11, section 523(a)(7).

20. Settlement Determination

H&SC section 39619.7 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 by ARB and why that provision is most appropriate for that alleged violation.

The penalty provision being applied by ARB in this case, is H&SC section 42402 et seq. because Hoyu is alleged by ARB to have 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 settlement amount was determined, including aggravating and mitigating factors and per unit or per vehicle basis for the settlement amount.

H&SC section 42402 et seq. provides strict liability penalties of up to \$1,000 per day for violations of the Consumer Product Regulations with each day being a separate violation. In cases like this, involving unintentional alleged violations of the Consumer Products Regulations where the alleged violator cooperates with the investigation, ARB has obtained penalties based on the excess emissions of VOCs. Administrative penalties are also obtained in some cases.

In this case, the total penalty amount payable by Hoyu, as agreed upon by the parties, is \$110,000 for emission violations. The penalty amount was based on a calculation of 11.11 tons of excess VOC emissions. The settlement amount, in this case, was reduced because this was a strict liability first-time alleged violation and Hoyu made diligent efforts to comply and to cooperate with the investigation.

The final penalty amount was determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from alleged 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 alleged violations. The settlement amount reflects alleged violations extending over a number of days resulting in alleged 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 amount, in this case, was based in part on confidential financial information or confidential business information provided by Hoyu that is not retained by ARB in the ordinary course of business. The penalty amount, in this case, was also based on confidential settlement communications between ARB and Hoyu 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 Hoyu, the desire to avoid the uncertainty, burden, and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Hoyu may have secured from its actions.


Is the settlement amount being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of alleged 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 practicable because Hoyu made the product formulation and sales data necessary to make this quantification available to ARB. Based upon this information (which Hoyu has designated as confidential), the alleged violations were calculated to have 11.11 tons of alleged excess VOC emissions emitted in California.


21. 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.
22. 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: Richard W. Corey
Title: Executive Officer
Date: 11/27/2017

Hoyu America Company

By: 
Name: Ikuhisa Kusumi
Title: CEO
Date: 10.23.2017