

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 Kao USA Inc. (Kao) with its principal place of business at 2535 Spring Grove Avenue, Cincinnati, Ohio.

RECITALS

1. California Code of Regulations (CCR), title 17, section 94509(a) (17 CCR § 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 volatile organic compounds (VOC).
2. 17 CCR § 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.
3. 17 CCR § 94509(a) sets forth in the Table of Standards the percentage by weight for Hair Styling Products: All Other Forms sold after December 31, 2006. Hair Styling Products: All Other Forms must meet the 2 percent standard.
4. 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.
5. ARB alleges that between July 2012 and December 2015, Kao sold, supplied, and offered for sale in California, KMS Hair Play Makeover Spray, Goldwell Stylesign Texture Style Sprayer 5, Goldwell Double Boost, KMS Hair Play Playable Texture, and Goldwell Naturally Full that are subject to the 6 percent limit for Hair Styling Products: Aerosol and Pump Spray in 17 CCR § 94509(a).
6. ARB alleges that the KMS Hair Play Makeover Spray, Goldwell Stylesign Texture Style Sprayer 5, Goldwell Double Boost, KMS Hair Play Playable Texture, and Goldwell Naturally Full products referenced in Recitals paragraph 5 contained concentrations of VOCs exceeding the 6 percent VOC limit for Hair Styling Products: Aerosol and Pump Spray category specified in 17 CCR § 94509(a).
7. ARB alleges that between July 2012 and December 2015, Kao sold, supplied, and offered for sale in California, KMS California Hair Stay Styling Gel that is subject to the 2 percent limit for Hair Styling Products: All Other Forms in 17 CCR § 94509(a).

8. ARB alleges that the KMS California Hair Stay Styling Gel referenced in Recitals paragraph 7 contained concentrations of VOCs exceeding the 2 percent VOC limit for Hair Styling Products: All Other Forms category specified in 17 CCR § 94509(a).
9. ARB alleges that if the allegations described in Recitals paragraphs 5, 6, 7 and 8 were proven, civil penalties could be imposed against Kao as provided in H&SC § 42402 et seq. for each and every unit involved in the violations.
10. Kao admits the allegations described in Recitals paragraphs 5, 6, 7 and 8 but denies any liability resulting from said allegations.
11. 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 violations and voluntarily agree to resolve this matter by means of this Agreement, without the need for formal litigation. Kao 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 Kao for the alleged violations referred to above, ARB and Kao agree as follows:

12. Kao 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 § 94500 et seq.; the terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
13. Kao, in settlement of the above-described alleged violations or allegations of 17 CCR § 94509(a), agrees to pay a penalty to ARB in the amount of one hundred thousand dollars (\$100,000) 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.
14. This Agreement shall apply to and be binding upon Kao 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.
15. 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 Kao, 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 § 42400.7(a).

16. 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.
17. This Agreement constitutes the entire agreement and understanding between ARB and Kao 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 ARB and Kao concerning these claims.
18. The effective date of this Agreement shall be the date upon which this Agreement is fully executed.
19. This Agreement is deemed to have been drafted equally by ARB and Kao; it will not be interpreted for or against either Party on the ground that said Party drafted it.
20. 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.
21. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
22. 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).
23. **Penalty Determination**

H&SC § 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 and why that provision is most appropriate for that violation.

The penalty provision being applied in this case is H&SC § 42402 et seq. because Kao sold, supplied, offered for sale, or manufactured for sale consumer products for commerce in California, which ARB alleges to be in violation of the Consumer Products Regulations (17 CCR § 94507 et seq.). The penalty provisions of H&SC § 42402 et seq. apply to violations of the Consumer Products Regulations because the regulations were adopted under authority of H&SC § 41712 which is in Part 4 of Division 26.

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

H&SC § 42402 et seq. provides 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, 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 assessment of \$100,000 is based on ARB's allegation that Kao emitted 7.63 tons of excess VOC. The penalty in this case was reduced because this was a strict liability first time violation and Kao 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 alleged excess emissions attributable to the violations was practicable because Kao made the product formulation and sales data necessary to make this quantification available to ARB. Based upon this information (which Kao has designated as confidential), the alleged violations were calculated to have 7.63 tons of excess VOC emissions emitted in California.

Final penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from the 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 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. Penalties in future cases might be smaller or larger on a per ton basis.

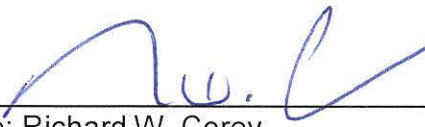
The final penalty in this case was based in part on confidential financial information or confidential business information provided by Kao that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and Kao 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 Kao, the desire to avoid the uncertainty, burden and expense of litigation, obtain

swift compliance with the law and remove any unfair advantage that Kao may have secured from its actions.

- 24. 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.
- 25. 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: 11/8/2017

Kao USA Inc.

By: 
Name: Conni Weaver
Title: VP, REO, Beauty Research,
Americas Research Laboratory

Date: September 29, 2017