

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 Provenza Floors, Incorporated (Provenza Floors) with its principal place of business at 15541 Mosher Avenue, Tustin, California.

RECITALS

1. Pursuant to its authority in Health and Safety Code (H&SC) section 39666, in 2008 ARB adopted the Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products (ATCM). California Code of Regulations (CCR), title 17, section 93120 et seq. (17 CCR section 93120 et seq.) that all manufacturers, distributors, importers, fabricators, and retailers of composite wood products and finished goods that contain composite wood products.
2. 17 CCR section 93120.2 (Emission Standard) specifies a maximum formaldehyde limit of 0.11 ppm for medium density fiberboard (MDF) sold after January 1, 2011.
3. The 17 CCR sections 93120.5 through 93120.6 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. ARB alleges that from November 8, 2011 to May 30, 2015, Provenza Floors imported, distributed, and offered for sale in California Provenza Caribbean Sea Nevis and Provenza Harmony Mirage laminate flooring made from MDF, a composite wood product, which is subject to the formaldehyde limit for MDF in 17 CCR section 93120.2.
6. ARB alleges that the Provenza Caribbean Sea Nevis and Provenza Harmony Mirage referenced in Recital paragraph 5 contained concentrations of formaldehyde exceeding the 0.11 ppm limit for MDF in 17 CCR section 93120.2.
7. ARB alleges Provenza Floors acting as an importer and distributor failed to take reasonable prudent precautions to ensure that the subject products complied with the Emission Standards as required in 17 CCR sections 93120.5 and section 93120.6.

8. ARB alleges that if the allegations described in Recitals paragraphs 5 through 7 were proven, civil penalties could be imposed against Provenza Floors as provided in H&SC section 39674 for each day in which each unit was offered for sale.
9. Provenza Floors 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. Provenza Floors 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 RELEASE

In consideration of ARB not filing a legal action against Provenza Floors for the violations referred to above, ARB and Provenza Floors agree as follows:

11. Provenza Floors 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. Provenza Floors in settlement of the above-described violations of 17 CCR section 93120 et seq., agrees to pay a penalty to ARB in the amount of twenty six thousand dollars (\$26,000) 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.
13. Effect of Untimely Payment. If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable
14. This Agreement shall apply to and be binding upon Provenza Floors 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 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 Provenza Floors, 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).

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 Provenza Floors 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 Provenza Floors 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 Provenza Floors; 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. 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.
22. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
23. 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).

24. **Penalty 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 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 Provenza Floors imported, distributed, and offered for sale composite wood products 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.

ARB 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 \$1,000 per day pursuant to H&SC section 39674. Provenza Floors was in violation for 26 days. Provenza Floors cooperated with the investigation, and made changes to their business procedures to prevent non-compliant products from being sold. 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 does not prohibit emissions above a specified level, but its Emission Standard does limit the concentration of formaldehyde in regulated products. ARB alleges in Recital 5 that certain products sold by Provenza Floors 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.

25. Provenza Floors acknowledges that ARB has complied with H&SC section 39619.7 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC 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.
26. 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.


- 27. The final penalty in this case was based in part on confidential financial information or confidential business information provided by Provenza Floors 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 Provenza Floors 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 Provenza Floors, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Provenza Floors may have secured from its actions.
- 28. Now therefore, in consideration of the payments from Provenza Floors to the Air Pollution Control Fund, ARB hereby releases Provenza Floors 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.
- 29. 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: Dr. Todd P. Sax
 Title: Chief, Enforcement Division
 Date: 11/6/18

Provenza Floors, Incorporated

By: 
 Name: Ron. Sadri
 Title: officer
 Date: 10-18-18

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