

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between the California Air Resources Board ("ARB"), with its principal office located at 1001 I Street, Sacramento, California; Rite Aid Corporation ("Rite Aid"), with its principal place of business located at 30 Hunter Lane, Camp Hill, Pennsylvania; and Vi-Jon, Inc. ("Vi-Jon"), with its principal place of business located at 8515 Page Avenue, St. Louis, Missouri 63114 (collectively the "Parties").

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, which includes the Hair Styling Product category.
2. California Code of Regulations (CCR), title 17, 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. CCR, title 17, section 94509(a) sets forth in the Table of Standards the percentage by weight for Hair Styling Products sold after December 31, 2006. Aerosol and pump spray Hair Styling Products must meet the 6 percent standard and 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. H&SC sections 42400-42403 authorize civil or administrative penalties not to exceed \$1,000.00 or \$10,000.00 for each day that the violation occurs.
5. ARB alleges that between January 2012 and December 2014, **Vi-Jon** manufactured for sale in California and **Rite Aid** sold, supplied, or offered for sale in California, **Rite Aid Renewal Hair Tonic**.
6. ARB alleges that the **Rite Aid Renewal Hair Tonic** was subject to the VOC limit for Hair Styling Products in title 17, CCR, section 94509(a) and at the time of sale or manufacture, contained VOC compounds in excess of the limits specified in the Table of Standards after the specified effective date.
7. ARB alleges that if the allegations described in recital paragraphs 1 through 6 were proven, civil penalties could be imposed against Rite Aid and Vi-Jon as provided in H&SC sections 42402 et seq. for each and every unit involved in the violations and each day.
8. Rite Aid and Vi-Jon admit the allegations described in recital paragraphs 1 through 7, but deny any liability resulting from said allegations.

9. 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. Rite Aid and Vi-Jon have taken, or agree to take, the actions enumerated below within the Terms and Release. ARB accepts this Agreement in termination and settlement of this matter.

TERMS AND CONDITIONS

In consideration of ARB not filing a legal action against Rite Aid and Vi-Jon for the alleged violations referred to above, ARB, Rite Aid, and Vi-Jon agree as follows:

1. Vi-Jon on its own behalf and on behalf of Rite Aid, agrees to pay a total payment in the amount of seventy-seven thousand, three hundred thirty-five dollars (**\$77,335.00**) payable to the **Air Pollution Control Fund** concurrent with the execution of this Agreement.
2. Rite Aid and Vi-Jon 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.
3. This Agreement shall apply to and be binding upon Rite Aid, Vi-Jon, and their 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 Agreement.
4. The terms and conditions set forth in this agreement shall remain valid and enforceable notwithstanding any future violations that may occur.
5. The Effective Date of this Agreement shall be the date upon which Rite Aid and Vi-Jon execute this Agreement.
6. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
7. 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.

8. This Agreement is deemed to have been drafted equally by ARB, Rite Aid, and Vi-Jon; it will not be interpreted for or against either Party on the ground that said Party drafted it.
9. 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 bar to any civil action by ARB against Rite Aid and Vi-Jon, their 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 any subsequent action, including criminal action as provided in H&SC section 42400.7(a).
10. This Agreement constitutes the entire agreement and understanding between ARB, Rite Aid, and Vi-Jon 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 ARB, Rite Aid, and Vi-Jon concerning these claims.
11. **SB 1402 Statement.** California H&SC 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 H&SC section 42402, et seq. because ARB alleges that Rite Aid and Vi-Jon 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 H&SC section 42402, et seq. apply to violations of the Consumer Products Regulations because these regulations were adopted under authority of H&SC section 41712, which is in Part 4 of Division 26 of the H&SC.

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

Penalties must be set at levels sufficient to discourage violations. ARB considered all relevant circumstances in determining the penalty in this case, including the eight factors specified in H&SC section 42403.

H&SC section 42402, et seq. provides strict liability penalties of \$1,000 per day for violations of the Consumer Product Regulations, with each day being a separate violation. In cases like this, involving unintentional violations where the violator cooperates with the investigation, destroyed the non-compliant product, and reformulated its product; ARB has sought and obtained penalties of approximately \$22,000 per ton of excess emissions of VOC attributable to the violation. In this case the total penalty is **\$77,335.00** and there were **3.45** tons of excess VOC attributable to the violation. Penalties in future cases might be higher or lower on a per ton or per unit 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 practicable because Rite Aid and Vi-Jon made the product formulation and sales data necessary to make this quantification available to the ARB. Based upon this information, the violations were calculated to have caused **3.45 tons** of excess emissions of VOC to be emitted to the atmosphere in California.

12. Rite Aid and Vi-Jon acknowledge that ARB has complied with SB 1402 in investigating, prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at H&SC sections 42403, 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 while this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level, it is practicable for ARB to quantify the excess emissions from the alleged violations, has done so and has included this information in this Agreement.

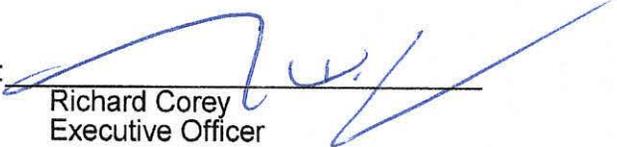
Final penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar negotiated cases, and the potential costs and risk associated with litigating these particular violations. 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 or per unit basis.

The final penalty in this case was based in part on confidential financial information or confidential business information provided by Vi-Jon 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 Rite Aid and Vi-Jon 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 Rite Aid and Vi-Jon, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Rite Aid and Vi-Jon may have secured from its actions.

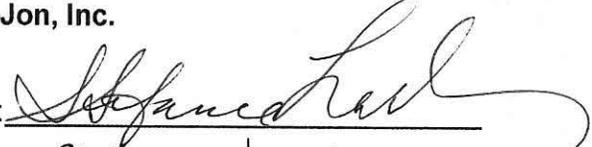
- 13. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid, or unenforceable in any jurisdiction, the remainder of this Agreement remains in full force and effect.
- 14. Each of the undersigned represents and warrants that he or she has full power and authority to enter into this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

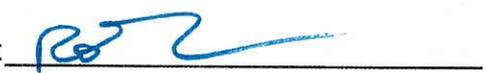
California Air Resources Board

Dated: 11/15/2016 By: 
 Richard Corey
 Executive Officer

Vi-Jon, Inc.

Dated: 10.18.16 By: 
 Name: Stefanie London
 Title: VP & General Counsel

Rite Aid Corporation

Dated: 10/10/16 By: 
 Name: RON CHIMA
 Title: VP, LITIGATION & COMMERCIAL LAW