

## 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; ACE Hardware Corporation (ACE) with its principal place of business at 2200 Kensington Court, Oak Brook, Illinois 60523; and CRC Industries, Inc. (CRC) with its principal place of business at 800 Enterprise Road, Suite 101, Horsham, Pennsylvania 19044.

### 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 Pressurized Gas Duster sold after December 31, 2010. Products subject to the Pressurized Gas Duster category must not use chemical compounds having a global warming potential (GWP) value of 150 or greater as in the Table 94509(n)(1).
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 (H&SC §§ 42400-42403) authorize strict liability penalties up to \$10,000.00 for each day that the violation occurs.
4. ARB alleges that between April 1, 2011 and April 15, 2014, CRC manufactured for sale in California and ACE sold, supplied, and offered for sale in California, ACE Moisture-Free Duster containing 1,1,1,2-Tetrafluoroethane (HFC-134a) that was over the GWP chemical compound limit for Pressurized Gas Dusters in 17 CCR § 94509(a) and § 94509(n).
5. ARB alleges that the ACE Moisture-Free Duster referenced in paragraph 4 contained concentrations of HFC-134a exceeding the GWP value of 150 limit for the Pressurized Gas Duster category specified in 17 CCR § 94509(a) and § 94509(n).
6. ARB alleges that if the allegations described in paragraphs 4 and 5 were proven, civil penalties could be imposed against ACE and CRC as provided in H&SC § 42402, et seq. for each and every day involved in the violations.
7. ACE and CRC admit the allegations described in paragraphs 4 and 5 but denies any liability resulting from said allegations.

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. ACE and CRC have taken or agree 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 ACE for the violations referred to above, ARB, ACE, and CRC agree as follows:

9. ACE and CRC 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.
10. In settlement of the above-described violations of 17 CCR § 94509(a), CRC on its own behalf and on behalf of ACE agrees to pay a penalty to ARB in the amount of three hundred thousand dollars (**\$300,000.00**) concurrent with execution of this agreement. Payment shall be divided in two parts:
- \$150,000.00 to the California Air Pollution Control Fund; and
  - \$150,000.00 to the San Joaquin Valley Air Pollution Control District School Bus Diesel Particulate Filter Retrofit Supplemental Environmental Project (SEP).

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 ACE, CRC, and their officers, directors, receivers, trustees, employees, successors and assignees, members, subsidiaries, affiliates, suppliers, 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 violations in paragraphs 4 and 5 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 ACE and CRC, its officers, directors, receivers, trustees, employees, successors and assignees, members, subsidiaries, affiliates, suppliers, 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).

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, ACE, and CRC 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, ACE, and CRC concerning these claims.
15. The effective date of this Agreement shall be the date upon which ACE and CRC execute this Agreement.
16. ACE and CRC agree not to assert laches as a defense.
17. This Agreement is deemed to have been drafted equally by ARB, ACE, and CRC; it will not be interpreted for or against either Party on the ground that said Party drafted it.
18. 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.
19. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
20. 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).
21. **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 CRC manufactured and ACE sold, supplied, offered for sale, or manufactured for sale consumer products for commerce in California, 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 per unit or per vehicle basis for the penalty.**

H&SC § 42402, et seq. provides strict liability penalties up to \$10,000.00 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 VOC, high GWP chemical compounds, and TACs. Administrative penalties are also obtained in some cases.

In this case the total penalty is \$300,000.00; there were 9.1 tons of HFC-134a emissions attributable to the violation. The penalty in this case was reduced because ACE and CRC made diligent efforts to comply and cooperate with the investigation and stopped sale of the product immediately. 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 HFC-134a in regulated products. In this case a quantification of the excess emissions attributable to the violations was practicable because ACE and CRC made the product formulation and sales data necessary to make this quantification available to ARB. Based upon this information (which the ACE and CRC have designated as confidential), the violations were calculated to have 9.1 tons of excess HFC-134a 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 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 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.

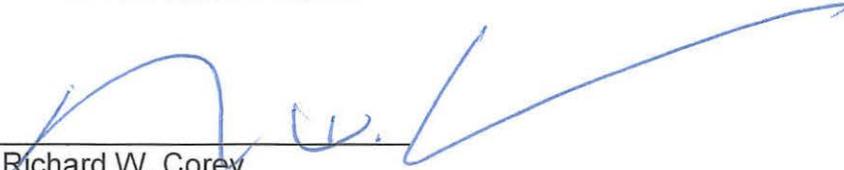
The final penalty in this case was based on confidential settlement communications between ARB, ACE, and CRC that ARB does not retain in the ordinary course of business. The penalty also reflects ARB's assessment of the relative strength of its case against ACE and CRC, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the

law, and remove any unfair advantage that ACE and CRC may have secured from its actions.

22. 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.
23. 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: 5/5/2017

**ACE Hardware Corporation**

By:   
Name: William Guzik  
Title: Executive Vice President  
Date: March 22, 2017

**CRC Industries, Inc.**

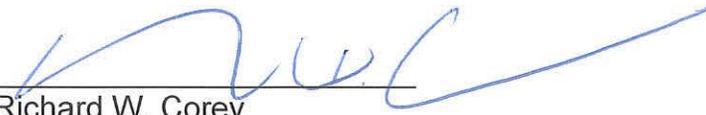
By: \_\_\_\_\_  
Name:  
Title:  
Date:

law, and remove any unfair advantage that ACE and CRC may have secured from its actions.

- 22. 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.
- 23. 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: 5/5/2017

**ACE Hardware Corporation**

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**CRC Industries, Inc.**

By:   
Name: Wayne King  
Title: CRC Americas President  
Date: March 24 2017