

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 DPM Fragrance with its principal place of business at 1010 Lynn Lane, Starkville, Mississippi.

RECITALS

1. ARB alleges that between January 2011, and April 2015, DPM Fragrance sold, supplied, and offered for sale in California, *Reserve Goddess*, *Volcano No. 6*, and *Reserve Fire Room Sprays* subject to the volatile organic compound (VOC) limit for the Air Freshener (liquid/pump sprays) category in California Code of Regulations (CCR), title 17, section 94509 (17 CCR § 94509) (a).
2. ARB alleges that the *Reserve Goddess*, *Volcano No. 6*, and *Reserve Fire Room Sprays* referenced in recitals paragraph 1 contained concentration of VOCs exceeding the 18 percent VOC limit for the Air Freshener (liquid/pump sprays) in 17 CCR § 94509 (a).
3. ARB alleges the air freshener products referenced in recital paragraph 1 did not display, on each consumer product container or package, the day, month, and year on which the product was manufactured, nor a code indicating such a date as specified in CCR, title 17, section 94512 (b).
4. ARB alleges that if the allegations described in recital paragraphs 1, 2, and 3 were proven, civil penalties could be imposed against DPM Fragrance as provided in Health and Safety Code (H&SC) sections 42402 (H&SC § 42402) et seq. for each and every unit involved in the violations.
5. DPM Fragrance admits the allegations described in recital paragraphs 1, 2, and 3, but denies any liability resulting from said allegations.
6. The parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

Therefore, the parties agree as follows:

TERMS AND CONDITIONS

1. DPM Fragrance shall not sell, supply, or offer for sale for use in California, any consumer products in violation of ARB consumer products regulations set forth in CCR, title 17, section 94500 et seq. however, the terms and conditions set forth in this agreement will remain valid and enforceable notwithstanding any future violations that may occur.

2. DPM Fragrance in settlement of the above-described violations of 17 CCR § 94509 (a) agrees to pay a penalty to ARB in the amount of six thousand five hundred dollars (\$6,500.00) payable to the California Air Pollution Control Fund, concurrent with the execution of this Agreement.
3. This settlement shall apply to and be binding upon DPM Fragrance 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.
4. 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 DPM Fragrance, 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).
5. 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.
6. This Agreement constitutes the entire agreement and understanding between ARB and DPM Fragrance concerning the claims and settlement in this Agreement. This Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between ARB and DPM Fragrance concerning these claims.
7. 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.
8. Each of the undersigned represents and warrants that he or she has full power and authority to enter into this Agreement.

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 § 42402, et seq. because DPM fragrance sold, supplied, offered for sale, or manufactured for sale consumer

products for commerce in California, in violation of the Consumer Products Regulations CCR, title 17, section 94507, et seq. The penalty provisions of H&SC § 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 § 42403).

Under H&SC § 42402, et seq. the penalties for strict liability violations of the Consumer Product Regulations are a maximum of \$1,000.00 per day of violation, with each day being a separate violation. In cases like this involving unintentional first time violations of the Consumer Products Regulations, ARB has sought and obtained penalties of approximately \$20,000.00 per ton of excess emissions of VOCs attributable to the violation. This represents an average cost to retire a ton of VOC emission credits and reformulate a product to comply with the Consumer Product regulations. In additions, ARB has in other similar cases sought and obtained further penalties for procedural violations and for investigative costs. In this case, the total penalty is \$6,500.00 and there were .264 tons of excess VOC emissions attributable to the violation. The final penalty amounted also includes a penalty for investigative costs. The penalty was reduced because DPM Fragrance cooperated fully with the investigation, is working toward developing a new VOC compliant formula for its air fresheners, and immediately suspended sales of all noncompliant air fresheners in California.

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 the excess emissions, if it is practicable to do so.

The Consumer Product Regulations do not prohibit emissions above a specific level, but they do limit the concentrations of VOCs in regulated products. In this case a quantification of the excess emissions attributable to the violation was practicable because DPM Fragrance made the product formulation and sales data necessary to make this quantification available to ARB. Based upon this information (which DPM Fragrance has designated as confidential), the violation was calculated to have caused 0.264 tons of excess emissions of VOCs to be emitted to the atmosphere in California.

9. DPM Fragrance acknowledges that ARB has complied with SB1402 in investigating, prosecuting, and settling this case. Specifically, ARB has considered all relevant

facts, including those listed at H&SC § 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.

10. 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.
11. The final penalty in this case was based in part on confidential financial information or confidential business information provided by DPM Fragrance 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 DPM Fragrance 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 DPM Fragrance, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage that DPM Fragrance may have secured from its actions.

California Air Resources Board

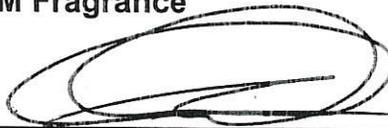
By: _____



Name: Dr. Todd P. Sax
Title: Chief, Enforcement Division
Date: 11/24/15

DPM Fragrance

By: _____



Name: Mr. Tom Reed
Title: President
Date: