

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the California Air Resources Board (CARB), with its principal office at 1001 I Street, Sacramento, California, and the Kraft Heinz Foods Company (Heinz) with its co-headquarters at 200 East Randolph Street, Suite 7600, Chicago, Illinois 60601.

### RECITALS

1. The Consumer Product Regulation, title 17, California Code of Regulations, section 94507 et seq. (17 CCR section 94507 et seq.) applies to any person who sells, supplies, offers for sale, or manufactures consumer products for use in California.
2. 17 CCR section 94509(a) sets forth in the Table of Standards the percentage by weight of allowed volatile organic compounds (VOC) for the "General Purpose Cleaner: Nonaerosol" category sold after December 31, 2012. General Purpose Cleaner: Nonaerosol products must meet the 0.5 percent standard for VOC.
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 authorize strict liability penalties up to \$10,000 for each day that the violation occurs.
4. CARB alleges that Heinz sold, supplied, and offered for sale in California, Heinz All-Natural Cleaning Vinegar and Heinz All Natural Distilled White Vinegar products ("Vinegar Products") that CARB alleges are subject to the VOC limit for the General Purpose Cleaner: Nonaerosol category specified in 17 CCR section 94509(a).
5. CARB alleges that the Vinegar Products referenced in Recital paragraph 4 contained concentrations of VOCs exceeding the 0.5 percent VOC limit for the General Purpose Cleaner: Nonaerosol category specified in 17 CCR section 94509(a).
6. CARB alleges that if the allegations described in Recitals paragraphs 4 and 5 were proven, civil penalties could be imposed against Heinz as provided in H&SC section 42402 et seq. for each and every unit involved in the violations.
7. Heinz admits the allegations described in Recitals 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 violations and voluntarily agree to resolve this matter by means of this Agreement, without the need for formal litigation. Heinz

has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. CARB accepts this Agreement in termination and settlement of this matter.

### **TERMS AND CONDITIONS**

In consideration of CARB not filing a legal action against Heinz for the alleged violations referred to above in Recitals 4 and 5, and Heinz's payment of the penalties and funding of the Supplemental Environmental Project (SEP) set forth below, CARB and Heinz agree as follows:

9. Heinz shall not manufacture, sell, supply, or offer for sale in California, any consumer products in violation of CARB consumer products regulations set forth in 17 CCR section 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. Heinz has agreed to undertake a SEP as described in Attachment B – SUPPLEMENTAL ENVIRONMENTAL PROJECT AGREEMENT – Marine Vessel Speed Reduction Incentive Program SEP (SEP Agreement), to offset a portion of the penalty, consistent with CARB's SEP Policy. Pursuant to this Agreement, Heinz shall make payments according to the schedule below.
11. Heinz has agreed that by funding the Marine Vessel Speed Reduction Incentive Program SEP, it will not receive any direct or indirect financial benefit, and that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of a CARB enforcement action.
12. Upon agreeing to the terms set forth in the SEP Agreement, and funding the Marine Vessel Speed Reduction Incentive Program SEP, Heinz is released of all liabilities as they relate to the Marine Vessel Speed Reduction Incentive Program SEP as reflected in this underlying Settlement Agreement.
13. In the event the SEP is not fully implemented in accordance with the terms of the SEP Agreement, CARB (as the third party beneficiary) shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount waived based on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, Heinz assigns any and all rights against the SEP implementer to CARB.
14. Within 30 days upon execution of this Agreement, Heinz shall pay a civil penalty and fund the Marine Vessel Speed Reduction Incentive Program SEP in the total amount of seven hundred thousand dollars (\$700,000.00), apportioned equally.

Payment Due Date:	In the Amount of and Payable to:	
30 Days of the Effective Date of the Settlement Agreement	\$350,000.00	Air Pollution Control Fund
	\$350,000.00	Ventura County Air Pollution Control District

The signed settlement agreement and any future mailings or documents per the terms of this Settlement Agreement shall be mailed to:

Ms. Stephanie Seymour  
 Air Pollution Specialist  
 California Air Resources Board  
 Enforcement Division  
 P.O. Box 2815  
 Sacramento, California 95812

For payments made to the Air Pollution Control Fund, please send the payment along with the attached "Settlement Agreement Payment Transmittal Instructions" (Attachment A-1) to:

California Air Resources Board  
 Accounting Office  
 P.O. Box 1436  
 Sacramento, California 95812-1436

Payments by wire transfer may be made to:

State of California Air Resources Board  
 c/o Bank of America, Inter Branch to 0148  
 Routing No. 0260-0959-3  
 Account No. 01482-80005  
 Notice of Transfer: Asha Sharma Fax: (916)322-9612  
 Reference: ARB Case # CP14-12-03

Wire Transfer Fee: Vendor is responsible for any bank charges incurred for processing wire transfers.

For payments made to the **Ventura County Air Pollution Control District**, please send the payment and the attached "Supplemental Environmental Project Payment Transmittal Form" (Attachment A - 2) to:

Ventura County Air Pollution Control District  
 For: Marine Vessel Speed Reduction Incentive Program SEP  
 669 County Square Drive  
 Ventura, California 93003

Payments by wire transfer may be made to:

County of Ventura  
c/o Wells Fargo Bank  
ABA No. 1210-00248  
Account No. 417-4387100  
Notice of Transfer: Connie Mah (805-654-3746)  
Reference: Kraft Heinz Foods Company SEP Payment for ARB  
Case # CP14-12-03

In addition, a copy of each payment check or proof of payment made to Ventura County Air Pollution Control District shall be mailed to:

Ms. Stephanie Seymour  
Air Pollution Specialist  
California Air Resources Board  
Enforcement Division  
P.O. Box 2815  
Sacramento, California 95812

15. Effect of Untimely Payment. If any payment is more than fifteen (15) days late, the Attorney General may file a civil action to enforce this settlement agreement, and Heinz shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
16. This Agreement shall apply to and be binding upon Heinz and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this settlement.
17. The parties stipulate that this Agreement shall be the full and final resolution of CARB's claims against Heinz regarding the above-described Vinegar Products and 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 CARB against Heinz, 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).
18. 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.
19. This Agreement constitutes the entire agreement and understanding between CARB and Heinz concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between CARB and Heinz concerning these claims.

20. The Effective Date of this Agreement shall be the date upon which it is fully executed.
21. This Agreement is deemed to have been drafted equally by CARB and Heinz; it will not be interpreted for or against either Party on the ground that said Party drafted it.
22. 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.
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 CARB 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 CARB contends Heinz sold, supplied, offered for sale, or manufactured for sale consumer products for commerce in California in violation of the Consumer Products Regulations (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 the regulations were adopted under authority of H&SC section 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 section 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, CARB has obtained penalties based on the excess emissions of VOCs. Administrative penalties are also obtained in some cases.

In this case, the total penalty is \$700,000 for emission violations. The per-unit penalty was based on 75.2 tons of excess VOC emissions. The penalty in this case was reduced because this was a strict liability first-time violation and Heinz

made changes to the Vinegar Products to bring them into compliance and was cooperative with the investigation.

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 in part on confidential financial information or confidential business information provided by Heinz that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and Heinz that CARB does not retain in the ordinary course of business. The penalty also reflects CARB's assessment of the relative strength of its case against Heinz, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Heinz may have secured from its actions.

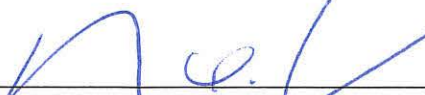
**Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.**

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 Heinz made the product formulation and sales data necessary to make this quantification available to CARB. Based upon this information (which Heinz has designated as confidential), the alleged violations were calculated to have resulted in approximately 75.2 tons of excess VOC emissions emitted in California.

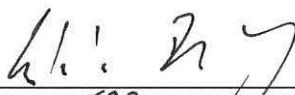
25. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid, or unenforceable in any jurisdiction, the remainder of this Agreement remains in full force and effect.
26. The undersigned represent that they have full power and authority to enter into this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

By:   
Name: Richard W. Corey  
Title: Executive Officer  
Date: 5/20/2018

**Kraft Heinz Foods Company**

By:   
Name: Eduardo Lopez  
Title: President of (Kraft Heinz) US  
Date: 4/18/18