

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 Target Corporation (Target) with its principal place of business at: 1000 Nicollet Mall, TPS-3155, Minneapolis, Minnesota.

RECITALS

1. ARB alleges that from December 2013 to February 2014, Target sold, supplied, and offered for sale in California a product named Splash De-Icer Premium Windshield Washer Fluid -30 °F in 1 gallon size that was subject to the volatile organic compound (VOC) limit for "Automotive Windshield Washer Fluid" category in Title 17, California Code of Regulations (CCR), section 94509(a).
2. ARB alleges that the Splash De-Icer Premium Windshield Washer Fluid -30 °F products referenced in recital paragraph 1, contained concentrations of VOCs exceeding the 1 percent State standard for "Automotive Windshield Washer Fluid" category in the Pre-Mixed non-type "A" Areas as well as the 25 percent State standard for "Automotive Windshield Washer Fluid" category in the Pre-Mixed type "A" areas specified in Title 17, CCR, section 94509(a).
3. Notwithstanding the written assurances provided by Target that the product referred in recital paragraph 1 had been removed from their stores and additional steps had been taken to prevent shipment and sales of this product, ARB further alleges that between March and May 23, 2014, Target sold, supplied, and offered for sale in California the same product described in recitals paragraph 1 after receiving written notification by ARB of the alleged violation for selling this product.
4. ARB alleges that if the allegations described in recital paragraphs 1 to 3 were proven, civil penalties could be imposed against Target as provided in Health and Safety Code Sections 42402 et seq. for each and every unit involved in the violations.
5. Target admits the allegations described in recital paragraphs 1, 2, and 3, but denies any liabilities 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. Target shall not sell, supply, 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. however, the terms and conditions set forth in this agreement will remain valid and enforceable notwithstanding any future violations that may occur.
2. Target in settlement of the above-described violations of Title 17, CCR, section 94509(a) agrees to pay a penalty in the amount of \$58,300.00 payable to the California Air Pollution Control Fund, concurrent with the execution of this Agreement.
3. Target, in furtherance of its environmental compliance program, will monitor and report on the sales of all automotive windshield washer fluids sold in California for a period of one calendar year from the execution date of this Agreement, including but not limited to the following tasks:
 - a. Generate, review, and retain weekly reports showing sales of automotive windshield washer fluid products containing more than 1% VOC sold in non-Type "A" areas of California. These reports will contain the following information: week of sales, brand name, manufacturer, store location, and quantity sold;
 - b. Generate, review, and retain quarterly reports showing a summary of California sales of all automotive windshield washer fluid products, regardless of type or location. These reports will contain the following information: product brand, name and freeze protection strength, manufacturer, and quantity sold; and
 - c. Upon discovery of any sale of automotive windshield washer fluid products containing more than 1% in non-Type "A" areas of California, Target will notify the Board within 10 working days, and in the notification, will identify the corrective actions taken to prevent further sales.
 - d. Within 30 days of the end of each quarter, generate, review and retain a list of all automotive windshield washer fluids offered for sale by Target in California.

4. This settlement shall apply to and be binding upon Target 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.
5. 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 Target, 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 Health and Safety Code section 42400.7(a).
6. 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.
7. This Agreement constitutes the entire agreement and understanding between ARB and Target 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 and Target concerning these claims.
8. 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.
9. Each of the undersigned represents and warrants that he or she has full power and authority to enter into this Agreement.
10. **SB 1402 Statement.** California Health and Safety Code (HSC) 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 Settlement 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 HSC section 42402, et seq. because Target sold, supplied, offered for sale, or manufactured for sale consumer products for commerce in California in violation of the Consumer Products Regulations (Title 17 California Code of Regulations (CCR) section 94507, et seq.). The penalty provisions of HSC section 42402, et seq. apply to

violations of the Consumer Products Regulations because the regulations were adopted under authority of HSC section 41712 which is in Part 4 of Division 26 of the Health and Safety Code. The penalty provisions of HSC section 42402, et seq. apply to requirements adopted pursuant to Part 4.

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 penalties, including the eight factors specified in HSC section 43403.

HSC 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 this case, ARB considered the number of past violations by Target, including violations involving three separate Windshield Washer Fluids products and the failure to cease sales after notification by the ARB. In this case the total penalty is \$58,300 reflects a penalty of \$1,000 per day for 56 days the noncompliant products were sold and available for sale plus the ARB's investigative costs.

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 concentration of VOCs in regulated products. In this case a quantification of the excess emissions attributable to the violations was practicable because Target provided sales data and product formulation data were accessible from the manufacturer, Splash Products, Inc. Based upon this information, the violations were calculated to have caused 0.045 tons of alleged excess emissions of volatile organic compounds to be emitted to the atmosphere in California.

11. Target acknowledges that ARB has complied with SB1402 in investigating and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty amount is being assessed and had considered and determined that while this penalty is not being assessed 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 Settlement Agreement.

12. 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 listed above. Penalties in future cases might be smaller or larger on a per ton basis.
13. The final penalty in this case was based in part on confidential business information provided by Target 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 Target that ARB does not retain in the ordinary course of business either. The penalty also, reflects ARB's assessment of the relative strength of its case against Target, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Target may have secured from its actions.

CALIFORNIA AIR RESOURCES BOARD

Dated: 3/9/2016

By: 
Ellen M. Peter
Chief Counsel

TARGET CORPORATION

Dated: 2/25/16

By: 

Name: Barbara White

Title: Director, Assistant General Counsel