

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 95814, and TV Direct LLC (TV Direct) with its principal place of business at 347 Fifth Avenue New York, New York 10016.

RECITALS

1. California Code of Regulations (CCR), title 17 section 94509 (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 Just Repel It sold after January 1, 1997. Just Repel It must meet the 60.0 percent state standard.
3. Failure to comply with the Consumer Products Regulations 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 January 2014 and December 2015, TV Direct sold, supplied, and offered for sale in California, Just Repel It subject to the VOC limit for Fabric Protectant: aerosol in 17 CCR § 94509 (a).
5. ARB alleges that the , Just Repel It referenced in Recitals paragraph 4 contained concentrations of VOCs exceeding the 60 percent VOC limit for Fabric Protectant: aerosol category specified in 17 CCR § 94509 (a).
6. ARB alleges that if the allegations described in Recitals paragraphs 4 and 5 were proven, civil penalties could be imposed against TV Direct as provided in H&SC §§ 42402, et seq) for each and every unit involved in the violations.
7. TV Direct admits the allegations described in recital 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. TV Direct has taken, or agrees 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 TV Direct for the violations referred to above, ARB and TV Direct agree as follows:

9. TV Direct 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 CCR, title 17, 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. TV Direct in settlement of the above-described violations of 17 CCR § 94509 (a) agrees to pay a penalty to ARB in the amount of four thousand five hundred (\$4,500) payable to the California Air Pollution Control Fund, concurrent with the execution of this Agreement. Payment and the signed Agreement shall be mailed to the address specified on the Payment Transmittal Form enclosed this Agreement.
11. This Agreement shall apply to and be binding upon TV Direct 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.
12. 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 a bar to any civil action by ARB against TV Direct, 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 § 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 and TV Direct 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 ARB and TV Direct concerning these claims.
15. The effective date of this Agreement shall be the date upon which this Agreement is fully executed.

16. This Agreement is deemed to have been drafted equally by ARB and TV Direct; it will not be interpreted for or against either Party on the ground that said Party drafted it.
17. 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.
18. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
19. **Senate Bill 1402 (SB 1402) Statement.**

H&SC section 39619.7 (SB 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 TV Direct 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 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 § 42402, et seq. provides strict liability penalties of \$1,000.00 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. Administrative penalties are also obtained in some cases.

In this case the total penalty is \$4,500.00; there were 0.07 tons of excess VOC emissions attributable to the violation. The penalty in this case was reduced because this was a strict liability first time violation and TV Direct made diligent efforts to comply and to cooperate with the investigation. 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 VOCs in regulated products. In this case a quantification of the excess emissions attributable to the violations was practicable because TV Direct made the product formulation and sales data necessary to make this quantification available to ARB. Based upon this information (which TV Direct has designated as confidential), the violations were calculated to have 0.07 tons of excess VOC 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 in part on confidential financial information or confidential business information provided by TV Direct 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 TV Direct 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 TV Direct, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that TV Direct may have secured from its actions.


20. 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.
21. 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: Dr. Todd P. Sax
Title: Chief
Date: 1/13/17

TV Direct LLC

By: 
Name: Kunal Santal
Title: Vice-President
Date: 12/29/16