

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Rust-Oleum Corporation (Rust-Oleum), with its principal location at 11 Hawthorn Parkway, Vernon Hills, Illinois 60061 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates CARB adopt regulations to achieve the maximum feasible reduction in volatile organic compounds (VOCs) emitted by consumer products and Reactive Organic Compounds (ROCs) by aerosol coating products (Health & Saf. Code § 41712.)
- (2) Regulation. CARB adopted the *Regulation for Reducing Emissions from Consumer Products* (Consumer Products Regulation) to reduce VOCs (Cal. Code Regs., tit.17, §§ 94507 et seq.) and the *Regulation for Reducing the Ozone Formed from Aerosol Coating Product Emissions* (Aerosol Coating Regulation) to reduce ROCs. (Cal. Code Regs., tit.17, §§ 94520 et seq.)
- (3) Regulatory Provisions. Any person who sells, supplies, offers for sale, or manufactures any consumer product for use in California shall comply with the standards set forth in the Consumer Products Regulation, including the VOC limit, ingredient prohibitions, labeling, reporting, displaying the date of manufacture, and other administrative requirements. (Cal. Code Regs., tit.17, §§ 94507–94515.) If anywhere on the container or packaging of any consumer product, any representation is made that the product may be used as, or is suitable for use as, a consumer product for which a lower VOC limit applies, then the lowest applicable limit shall apply. (Cal. Code Regs., tit.17, § 94512(a).)

Any person who sells, supplies, offers for sale, applies, or manufactures any aerosol coating product for use in California, shall comply with the standards set forth in the Aerosol Coating Regulation, including the reactivity or ozone limits; prohibitions on products containing ozone depleting substances, labeling; reporting; dating; and other administrative requirements. (Cal. Code Regs., tit.17, §§ 94520–94526.) If anywhere on the container of any aerosol coating product, any representation is made that the product may be used or is suitable for a use as a product for which a lower limit applies, then the lowest applicable limit shall apply. (Cal. Code Regs., tit.17, § 94524(a).)

- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to ten thousand nine hundred ten dollars (\$10,910.00 USD) for strict liability violations, respectively, for each day in which the

violation occurs. (Cal. Code Regs., tit.17, §§ 94507 et seq. and § 94520 et seq.; Health & Saf. Code §§ 42402 et seq.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Rust-Oleum was organized under the laws of Delaware as a limited liability company and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement settles Notice of Violation (NOV) CP22-01-03, which was issued on February 10, 2022. CARB alleged Rust-Oleum violated the Consumer Products Regulation by selling, supplying, offering for sale, or manufacturing for use in California, Testors Craft Clear Spray Adhesive, which is subject to and exceeded a VOC limit of 30 percent by weight for the Mist Spray Adhesive category; failing to properly label the product with the product category and VOC limit; and failing to adhere to the administrative requirements set forth in section 94512 as outlined in Notice of Violation CP22-01-03. (Cal. Code of Regs. §§ 94509 and 94512.)

CARB alleged Rust-Oleum violated the Aerosol Coating Regulation by selling, supplying, offering for sale, applying, or manufacturing for use in California, Rust-Oleum Peel Coat Top Coat Effects, which is subject to and exceeded a reactivity limit of 0.85 grams of ozone per gram of product (g O₃/g product) for the Clear Coatings category as outlined in Notice of Violation CP22-01-03. (Cal. Code of Regs., tit. 17, § 94522.)

CARB alleges that if the allegations described in Paragraph 6 were proven, civil penalties could be imposed against Rust-Oleum for each and every day the noncompliant products were sold, supplied, offered for sale or manufactured for use in California.

- (7) Acknowledgment. Rust-Oleum admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) Consideration. 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 Settlement Agreement. In order to resolve the violations described herein, Rust-Oleum has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against Rust-Oleum for the alleged violations referred to above in Paragraph 6, and in consideration of Rust-Oleum's agreement to complete all terms and conditions set forth below, CARB and Rust-Oleum agree as follows:

- (9) Settlement Amount. Rust-Oleum shall pay a civil penalty of ten thousand dollars (\$10,000.00 USD). Rust-Oleum shall make all payments within 30 calendar days from the date CARB notifies Rust-Oleum of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Rust-Oleum shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Rust-Oleum is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to Rust-Oleum in accordance with Paragraph 12 (Notices).
- (11) Documents. Rust-Oleum shall promptly email or mail the signed and dated Settlement Agreement to the address or email in Paragraph 12 (Notices).
- (12) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board
Enforcement Division / Settlement Agreements
Consumer Products Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to Rust-Oleum:

Rust-Oleum Corporation
11 Hawthorn Parkway
Vernon Hills, Illinois 60061

As to Rust-Oleum's Legal Representation:

Howard Berman
E4 Strategic Solutions, Inc.
P.O. Box 11983
Burke, Virginia 22009
hberman@e4strategicsolutions.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (13) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Rust-Oleum shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (14) Repeat Violations. Rust-Oleum agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (15) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 8 pages and 33 paragraphs.
- (16) Binding Effect. This Settlement Agreement binds Rust-Oleum, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (17) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (18) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (19) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.

- (20) Choice of Law. This Settlement 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.
- (21) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.
- (22) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (23) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.
- (24) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (25) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (26) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (27) Release. In consideration of full payment of the civil penalty, and all other undertakings above, CARB hereby releases Rust-Oleum and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.

(28) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

(29) Per Unit Penalty. The strict liability per unit penalty in this case is a maximum of \$10,910.00 per violation per day under Health and Safety Code section 42402 et seq. for violations of the Consumer Products Regulation and the Aerosol Coating Regulation. In cases like this, involving unintentional violations of the Consumer Products Regulation and Aerosol Coating Regulation, where the violator cooperates with the investigation, CARB has obtained penalties based on excess emissions. Penalties based on days of violation are also obtained in some cases. The penalty in this case is for: (1) three days of excess VOC emissions, for a penalty of \$1,000 per day; (2) 0.20 tons of excess reactivity emission, for a penalty of \$20,000 per ton; and (3) three days of violation of administrative requirements, for a penalty of \$1,000 per day.

(30) Emissions. The provisions cited above do prohibit emissions above a specified limit of 30 percent by weight VOC for Mist Spray Adhesive category, effective January 1, 2017; and 0.85 grams of ozone per gram of product for Clear Coating category, effective January 1, 2017. Since CARB has alleged that the products did not meet the regulatory requirements, the emissions above the specified limits were excess and illegal.

(31) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.

(32) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Rust-Oleum or confidential settlement communications.

(33) Effect of Settlement/Reservation of Rights. The following shall apply:

- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Rust-Oleum with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Rust-Oleum with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Rust-Oleum to CARB.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
 - (v) Any criminal liability.
 - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Rust-Oleum shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of Rust-Oleum or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Rust-Oleum, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or

grant any cause of action to, any third party not covered by this Settlement Agreement.

- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Rust-Oleum is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Rust-Oleum's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Rust-Oleum's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Date: June 6, 2022

Rust-Oleum Corporation

Signature: /S/

Name: John Brodersen

Title: Vice President, General Counsel

Date: June 3, 2022