

DOCKETED

Docket Number:	16-ENFORCE-03
Project Title:	Settlement Agreements
TN #:	215112
Document Title:	PFISTER - Spectrum Brands Inc. Settlement Agreement and Release
Description:	N/A
Filer:	Long Nguyen
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	12/27/2016 3:46:07 PM
Docketed Date:	12/27/2016

This SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is entered into between California Energy Commission (“Commission”), with its principal office at 1516 Ninth Street, Sacramento, California 95814, and Spectrum Brands, Inc.’s Pfister division (“PFISTER”), with its principal place of business at 19701 DaVinci, Lake Forest, California 92610, collectively referred to as the “Parties.”

I. RECITALS

(1) The Commission’s Appliance Efficiency Regulations at California Code of Regulations, Title 20, Article 4, sections 1601-1608,¹ set forth the requirements to sell or offer for sale regulated appliances in California. The pertinent requirements include:

- Efficiency: The appliance meets the required efficiency standards set forth in sections 1605.2 or 1605.3.
- Marking: The appliance is correctly marked and labeled as required under section 1607.
- Certification: The appliance is certified to the Commission and appears in the Commission’s most recent Appliance Efficiency Database (Database) as required under section 1606.

(2) The Commission’s enforcement authority includes the issuance of administrative civil penalties under section 1609.

(3) PFISTER manufactures several models of plumbing fittings, that it sells or offers for sale in California either directly or through retailers.

(4) PFISTER plumbing fittings are subject to the efficiency, marking and certification requirements for this appliance class as described in paragraph I(1) above.

(5) From January 1, 2016 through March 10, 2016, PFISTER allegedly sold or offered for sale kitchen faucets in California that were not marked as required by section 1607(c)(1), and allegedly failed to meet the applicable energy efficiency (flow rate) standards as required in section 1605.3(h)(3).

(6) Based on the above recitals, the Commission could, if proven, impose penalties for each violation alleged, obtain injunctive relief to prohibit PFISTER from continuing to sell or offer for sale, non-compliant kitchen faucet units in California and take any other enforcement action as allowed by law.

(7) Penalties must be set at levels sufficient to deter violations. Section 1609(b)(3) and Public Resources Code section 25402.11 (a)(2) identify the following factors the Commission shall consider when determining the amount of an administrative civil penalty:

- The nature and seriousness of the violation.
- The persistence of the violation, meaning a responsible person’s history of past

¹ All references are to California Code of Regulations, title 20, Article 4, unless otherwise specified.

- violations of the Appliance Efficiency Regulations over the previous seven years.
- The number of violations arising from the course of conduct that is subject of the enforcement proceeding.
 - The length of time over which the violation occurred.
 - The willfulness of the persons responsible for the violation.
 - The harm to consumers and to the state that resulted from the amount of energy wasted due to the violation.
 - The number of persons responsible for the violation.
 - The efforts of the persons responsible for the violation to correct the violation prior to initiation of an enforcement action by the Energy Commission.
 - The cooperation, by the persons responsible for the violation, with the Energy Commission during its investigation.
 - The assets, liabilities, and net worth of the persons responsible for the violation. This information will be considered to reduce the administrative civil penalty amount, should a responsible person or persons elect to provide asset, liability, and net worth documentation to the Executive Director to demonstrate that a reduction in a penalty amount is necessary to avoid an undue burden.

(8) In reaching this Agreement the Commission considered the facts of the case and applied the above factors to determine an appropriate settlement. In particular, PFISTER fully and timely cooperated with the Energy Commission by self-reporting the violations, by providing the Commission sales data of non-compliant units and by promptly making any necessary corrections or adjustments to models, and by promptly halting sales in California and otherwise mitigating the violations. . The efforts by PFISTER saved the Commission time and resources in investigating the violations of the non-compliant units.

(9) PFISTER is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with the Commission. For the purpose of so resolving this matter, without the expense and uncertainty of further proceedings, PFISTER understands and agrees that the Commission could allege a factual basis for violations of section 1607(c)(1) and 1605.3(h)(3), but denies any liability resulting from said allegations. The Commission accepts this Agreement in termination of this matter. Accordingly, the Parties agree to resolve this matter completely by means of this Agreement, without the need for adjudication.

II. TERMS AND RELEASE

In consideration of the recitals listed above which are incorporated into this section by reference, and the mutual agreements set forth below, the Commission and PFISTER agree as follows:

(1) This Agreement covers the following PFISTER, kitchen faucets sold or offered for sale as described in Recital paragraph I(5): G1271000, G1343444, G1344444, G134444S, G1345000,

G134500S, G1346000, G1346000S, G1347000, G134700S, G1354100, G1355000, G1357000, G135700S, G1358000, G135800S, G1714000, J134444C, J134444S, G1362000, G136200S, G136500Y, G136200Y, G1365000, G136500S, G1341444, G134144S, G1351000, G1351100, G1352000, G1354000, J134144C, and J134144S.

(2) For selling or offering for sale in California kitchen faucet units that did not meet the energy efficiency standards set forth in section 1605.3(h)(3), and were not marked as required in section 1607(c)(1), and, in consideration of the factors listed in paragraph I(7) and PFISTERs' cooperation and the other facts and circumstances described in paragraph I(8) above, PFISTER shall pay the total sum of \$104,000.00 due within ten business days of the execution of this Agreement by the Commission. The check shall be made payable to the California Energy Commission. Payment shall be made by the applicable due dates, and sent with the corresponding remittance statement to the following address:

California Energy Commission
Accounting Office, MS-2
1516 Ninth Street
Sacramento, California 95814-5512

(3) PFISTER also agrees to comply with the Commission's Appliance Energy Efficiency Regulations in the future, including but not limited to taking each of the following actions for any and all kitchen faucet units it sells or offers for sale in California:

- a. Ensure each basic model is tested to confirm compliance with energy performance standards.
- b. Certify each basic model to the Database.
- c. Add the required marking to the unit.

(4) This Agreement shall apply to and be binding upon PFISTER and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and upon the Commission and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.


(5) In consideration of the payment specified above, the Commission hereby releases PFISTER and its principals, officers, agents, employees, shareholders, subsidiaries, predecessors and successors from any and all claims for violations of sections 1605.3(h)(3) and 1607(c)(1) as described in Recital paragraph I(5) and Terms and Release paragraph II(1), above.


(6) This Agreement constitutes the entire agreement and understanding between the Commission and PFISTER 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 the Commission and PFISTER 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) PFISTER further agrees that if the subject matter of this agreement comes before the Commission in an administrative adjudication, neither any member of the Energy Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Agreement.
- (9) Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
- (10) 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. Any litigation arising out of or related to this Agreement shall be filed in the Superior Court of California, County of Sacramento.
- (11) Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (12) The failure of any Party to enforce any provision of this 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 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 Agreement or otherwise provided by law.
- (13) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either Party on the ground that said Party drafted it.
- (14) This Agreement is effective upon signature by a representative of PFISTER with authority to bind the company, and approval by an authorized agent of the Commission. The Parties agree that fax or scanned signatures and multiple signature pages are acceptable for purposes of executing this Agreement.

California Energy Commission

SPECTRUM BRANDS, INC. (PFISTER)

By: 
Name: Robert P. Oglesby
Title: Executive Director
Date: 12-23-16

By: 
Name: Philip S. Szuda
Title: SUP + GM.
Date: 12/9/16