

DOCKETED

Docket Number:	16-ENFORCE-03
Project Title:	Settlement Agreements
TN #:	222000
Document Title:	QC Manufacturing, Inc. Settlement Agreement
Description:	N/A
Filer:	Michael Rains
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	12/18/2017 11:59:01 AM
Docketed Date:	12/18/2017

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is entered into between the California Energy Commission (Commission), with its principal office at 1516 Ninth Street, Sacramento, California 95814, and QC Manufacturing, Inc. (QC), with a place of business at 43352 Business Park Drive, Temecula, California, 92590 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 1601-1609 (Appliance Efficiency Regulations)¹ set forth the requirements to sell or offer for sale regulated appliances in California. The pertinent requirements include:

- Testing: The appliance is tested as required in 1603, using the applicable test method set forth in section 1604.
- Marking: The appliance is correctly marked and labeled as required under section 1607.
- Certification and Declaration of Accuracy: The appliance is certified to the Commission and appears in the Commission's most recent Appliance Efficiency Database (Database) with all information required under section 1606.

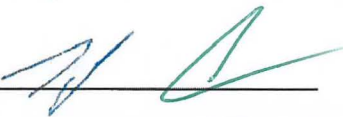
(2) The Commission's enforcement authority includes the removal of non-complying appliances from the Database, as set forth in section 1608, and the issuance of administrative civil penalties under section 1609.

(3) QC manufactures whole house fans that it sells or offers for sale in California, either directly or through retailers, distributors, or installers.

(4) There are no energy efficiency standards or energy design standards for whole house fans, but QC whole house fans are subject to the testing, marking, and certification requirements as described in paragraph I(1) above. See sections: 1601(d)-Scope, 1604(d) Table D-1-Test Methods, 1606(a) Table X(D)-Listing, Certification and Data Submittal, and 1607-Marking.

(5) From December 15, 2015, to July 18, 2016, QC sold or offered for sale either directly or through retailers, distributors, or installers whole house fans in California that were listed in the Database with greater air flow and air flow efficiency data than could be verified by the Commission's testing laboratory, in violation of sections 1606(a)(3)(E)(1) and 1608.

(6) Based on the above Recitals, the Commission, through adjudication, could seek penalties for each violation alleged, seek injunctive relief to prohibit QC from continuing to sell or offer for sale, non-compliant whole house fans in California and take any other enforcement action as allowed by law. QC contends it is not liable for penalties or injunctive relief.


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

(7) Section 1609(b)(3) and California Public Resources Code section 25402.11(a)(2) read together 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 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) Penalties must be set at levels sufficient to deter violations. In developing this Agreement the Commission considered the facts of the case and the above factors to determine an appropriate settlement. Further, in this case QC cooperated with the Commission in the investigation by retesting its products and updating its product information in the Database, and by providing to the Commission sales data of units sold. The efforts by QC saved the Commission time and resources in investigating the case. Also, QC provided financial information that the Commission took into consideration. This documentation is confidential and the Commission does not retain it in the regular course of business.

(9) QC is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with the Commission. 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 QC agree as follows:



(1) This Agreement covers the models of QC whole house fans, over the time period specified in paragraph I(5):

AFG CON-3.0	QC ES-1700	QC STL-3.3	QC-CL-2250	QC-RM1500
AFG ES-1500	QC ES-2000	QC STL-4.0	QC-CL-3100	QC-STL 2.5B
AFG GS-1500	QC ES-2250	QC STL-4.8B	QC-CL-4700	QC-STL 3.3B
AFG PRO-3.0	QC ES-2850	QC TRI PRO-1.5	QC-CL-5400	RM ES-1100
GA ES-1500	QC ES-3100	QC TRI PRO-2.5	QC-CL-6400	RM ES-2200
GX ES-1100	QC ES-4700	QC TRI PRO-3.3	QC-ES-1500	STL PRO-1.5
QC 4700	QC ES-5400	QC TRI PRO-4.8	QC-ES-2250	STL PRO-2.5
QC 6400	QC ES-6400	QC TRI PRO-6.5	QC-ES-3100	STL PRO-3.3
QC CL-1500	QC HV-1000	QC TRI-2.3	QC-ES-4700	STL PRO-4.8
QC CL-2250	QC STL 1.5B	QC TRI-3.0	QC-ES-5400	STL PRO-5.5
QC CL-3100	QC STL PRO-1.5	QC-1200	QC-ES-6400	STL PRO-6.5
QC CL-4500	QC STL PRO-2.5	QC-1500	QC-GA1000	TRI PRO-1.5
QC CL-4700	QC STL PRO-3.3	QC-2250	QC-GA1200	TRI PRO-2.5
QC CL-6400	QC STL PRO-4.8	QC-3100	QC-GA1500	TRI PRO-3.3
QC CON-2.9	QC STL PRO-6.5	QC-3200	QC-GX1200	TRI PRO-4.8
QC ES-1250	QC STL-1.5	QC-4500	QC-GX800	TRI PRO-5.5
QC ES-1500	QC STL-2.5	QC-CL-1500	QC-RM1000	TRI PRO-6.5

(2) For selling or offering for sale in California whole house fans described in paragraphs I(5) and II(1), and, in consideration of the factors listed in paragraphs I(7) and I(8) above, QC shall pay the total sum of two hundred five thousand dollars (\$205,000.00) to the Appliance Efficiency Enforcement Subaccount established by Public Resources Code section 25402.11(c). Payment shall be made by a check payable to the California Energy Commission, in one payment at the time of signing this agreement and five quarterly payments as shown below:

Payment Number	Due Date	Amount
1	Date of signing	\$55,000.00
2	January 1, 2018	\$30,000.00
3	April 1, 2018	\$30,000.00
4	July 1, 2018	\$30,000.00
5	October 1, 2018	\$30,000.00
6	January 1, 2019	\$30,000.00

Payment shall be made by the applicable due date 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

Effect of untimely payment: If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable. In addition, if the Commission takes action to enforce this Agreement, the Commission may seek all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

It is agreed that if QC, including its subsidiary or parent company, at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving QC, its subsidiary, or parent company, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against QC, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of QC's, its subsidiary, or parent company's properties, or if any deposit account or other property of QC's, its subsidiary, or parent company be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or QC, its subsidiary, or parent company takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.

(3) QC also agrees to take each of the following actions for any and all regulated appliances it will sell or offer for sale in California:

- a. Test all basic QC models, utilizing the applicable test method, and ensure that each model is tested for air flow rates in compliance with HVI-916 requirements to accurately confirm each unit's air flow rate in cubic feet per minute (CFM) and air flow efficiency in cubic feet per minute per watt (CFM/watt).
- b. Certify all QC basic models in the Database, and ensure listing(s) are kept accurate and up to date.
- c. Ensure that HVI-916 flow rates determined in testing are used in advertising, the website, brochures, handouts or other marketing materials produced by QC that mention any QC model's flow rate capabilities.
- d. QC shall, in accordance with the program outlined in Attachment A, notify customers who purchased QC whole house fans prior to July 18, 2016, of QC's commitment to address any concerns they might have with the air flow rate and air flow efficiency of their fans. As provided in Attachment A, the program notifications shall include telephone numbers, website contact information, and street address, including: info@qc-mfg.com, <https://quietcool.com/support>, (951) 325-6340 or 1-888-QUIETCOOL and QC Manufacturing, 43352 Business Park Drive, Temecula, California 92590.

(4) This Agreement shall apply to and be binding upon QC 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 QC and its principals, directors, officers, agents, distributors, contractors, employees, shareholders, subsidiaries, predecessors and successors, from any and all claims for violations of sections 1606(a)(3)(1), 1607 (marking), 1608, and 1609 (administrative penalties) with respect to the appliances identified in paragraph I(5), whose model numbers are identified in paragraph II(1).

(6) This Agreement constitutes the entire agreement and understanding between the Commission and QC 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 QC 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) QC further agrees that if the subject matter of this agreement comes before the Commission in an administrative adjudication, neither any member of the 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.




(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 QC 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

By: 
Name: Drew Bohan
Title: Executive Director
Date: 12-15-17

QC Manufacturing, Inc.

By: 
Name: Dane Stevenson
Title: President
Date: 12/11/17