

DOCKETED

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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is entered into between the California Energy Commission (Energy Commission), with its principal office at 1516 Ninth Street, Sacramento, California 95814, and Electric Motor Warehouse (EMW), with a place of business at G1460 E. Hemphill Road, Burton, Michigan 49529, collectively referred to as the Parties.

I. RECITALS

(1) The Energy 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.
- Efficiency and design: The appliance meets the required efficiency and design 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 (MAEDbS) as required under section 1606.

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

(3) EMW manufactures and sells several models of residential pool pump and motor combinations (pool pumps) and pool motors that it sells or offers for sale in California, either directly or through retailers or distributors.

(4) EMW pool pumps and pool motors are subject to the testing, efficiency, design, marking, and certification requirements for this appliance class as described in paragraph I(1) above.

(5) From July 2015 to February 2019, EMW sold or offered for sale through retailers or distributors 127 pool pumps and pool motors in California, that did not meet the design standards set forth in section 1605.3(g)(5)(B):

"Residential pool pump motors with a pool pump motor capacity of 1 HP or greater which are manufactured on or after January 1, 2010, shall have the capability of operating at two or more speeds with a low speed having a rotation rate that is no more than one-half of the motor's maximum rotation rate ... "

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

The Energy Commission inspected the Precision brand pool pump model E1520EE and determined it failed to meet the applicable energy design requirement to operate at a minimum of two speeds for pool pumps with a motor capacity of one horsepower or greater.

(6) Based on the above Recitals, the Energy Commission, through adjudication, could impose penalties for each violation alleged, obtain injunctive relief to prohibit EMW from continuing to sell or offer for sale, non-compliant pool pumps and pool motors in California, and take any other enforcement action as allowed by law.

(7) Section 1609(b)(3) and California Public Resources Code section 25402.11(a)(2) identify the following factors the Energy 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 Energy Commission considered the facts of the case and applied the above factors to determine an appropriate settlement. Further, in this case EMW cooperated with the Energy Commission in the investigation by implementing measures to prevent the sale of single speed pool pumps and pool motors for use in residential pools, and by providing to the Energy Commission sales data of non-compliant units. The efforts by EMW saved the Energy Commission time and resources in investigating the violations and minimized the impacts on energy consumption and the environment in California, from the non-compliant units.

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

- (1) This Agreement covers the pool pump and pool motor models listed in Attachment A.
- (2) For selling or offering for sale in California, pool pumps and pool motors identified in paragraph I(5), whose model numbers are identified in Attachment A, that did not meet the energy design standards prescribed by section 1605.3, and in consideration of the factors listed in paragraph I(7) and I(8) above, EMW shall pay as an administrative civil penalty the total sum of ten thousand dollars (\$10,000.00) by check made payable to the California Energy Commission by September 1, 2019. 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

- (3) EMW also agrees to take each of the following actions for any and all regulated appliance it will sell or offer for sale in California:
 - a. Test all basic models, utilizing the applicable test method, to ensure conformance with the Appliance Efficiency Regulations.
 - b. Certify all basic models in MAEDbS, and ensure listing(s) are kept current and up to date.
 - c. Add the required marking to the unit.
 - d. Implement measures to restrict the sale of single speed products for use in residential pool applications. This includes maintaining a statement on EMW's webpage(s) informing customers of the restriction on single speed pool pumps and pool motors to California customers, and cancelling orders to California addresses. EMW shall also maintain a statement on all single speed pool pump and pool motor order confirmations.
- (4) This Agreement shall apply to and be binding upon EMW and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and upon the Energy Commission and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

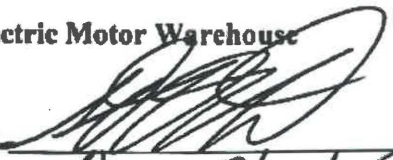
- (5) In consideration of the payment specified above, the Energy Commission hereby releases EMW and its principals, directors, officers, agents, employees, shareholders, subsidiaries, predecessors and successors from any and all claims for violations of section 1608 (efficiency, marking, certification), relating to the appliances identified in paragraph I(5), whose model numbers are identified in Attachment A.
- (6) This Agreement constitutes the entire agreement and understanding between the Energy Commission and EMW 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 Energy Commission and EMW 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) EMW further agrees that if the subject matter of this Agreement comes before the Energy 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.
- (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 EMW with authority to bind the company, and approval by an authorized agent of the Energy Commission or, if required, the Energy Commission at a publically noticed meeting through an order or resolution. 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: 8/8/19

Electric Motor Warehouse

By: 
Name: Steve Olysted
Title: President
Date: 8/6/19

Attachment A

Pool Motor & Pump Combinations

Brand	Model
Precision	E1150 E1520EE E215EE E315EE
Hayward	SP3025X30AZ

Pool Motors

Brand	Model		
Century	B128	BN40SS	ST1202
	B129	BV90	ST1302V1
	B130	CT1102	USQ1102
	B2853	QC1102	USQ1202
	B654	SN1102	USQ1252
	B796	SN1152	UST1102
	B809	SN1202	UST1152
	B855	SQ1152	UST1202
	BN25V1	ST1102	UST1252
	BN35V1	ST1152	
US Motors	ASB128	EH637	
	ASB654	EH705	
	ASB796	ESQ1152	
	ASB809	ESQ1202	
	ASB841	EUSQ1202	
	ASB842	EUST1252	
	ASB843	EZBN25	
	ASB850	EZBN35	
	EB859		