

DOCKETED	
Docket Number:	16-ENFORCE-03
Project Title:	Settlement Agreements
TN #:	231806
Document Title:	Illinois Tool Works, Inc Settlement Agreement and Release
Description:	N/A
Filer:	Amanda Harris
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	1/30/2020 2:37:57 PM
Docketed Date:	1/30/2020

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is entered into between the California Energy Commission (CEC), with its principal office at 1516 Ninth Street, Sacramento, California 95814, and Illinois Tool Works Inc. (ITW), with a place of business at 155 Harlem Avenue, Glenview, Illinois 60025, collectively referred to as the Parties.

I. RECITALS

(1) CEC'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 section 1603, using the applicable test method set forth in section 1604.
- 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 CEC and appears in CEC's most recent Modernized Appliance Efficiency Database System (MAEDbS) as required under section 1606.

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

(3) ITW manufactures several models of battery operated products (see attachment A) that it sells or offers for sale under multiple brands in California, either directly or through retailers or distributors.

(4) ITW battery operated products contain small battery charger systems (SBCS) that are subject to the testing, efficiency, marking, and certification requirements for this appliance class as described in paragraph I(1) above.

(5) From July 2015 to June 2018, ITW sold or offered for sale directly or through retailers or distributors battery operated products in California, that were not listed in MAEDbS as required in section 1606, did not meet the SBCS efficiency standards set forth in section 1605.3(w)(2) when tested using the appropriate test method as described in section 1604(w), or were not marked as required in section 1607(d)(10).

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

(6) Based on the above Recitals, CEC, through adjudication, could impose penalties for each violation alleged, obtain injunctive relief to prohibit ITW from continuing to sell or offer for sale non-compliant SBCS 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 CEC 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 the 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 CEC.
- The cooperation, by the persons responsible for the violation, with CEC 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, CEC considered the facts of the case and applied the above factors to determine an appropriate settlement. Further, in this case ITW cooperated with CEC in the investigation by redesigning certain products; promptly testing, certifying, and marking units as applicable; notifying retailers and removing the non-compliant units from the California market; and by providing to CEC sales data of non-compliant units. The efforts by ITW saved CEC time and resources in investigating the violations and minimized the impacts from the non-compliant units on the competitive business environment, energy consumption, and the environment in California.

(9) ITW is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with CEC. CEC 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 that are incorporated into this section by reference, and the mutual agreements set forth below, CEC and ITW agree as follows:

- (1) This Agreement covers the ITW model numbers listed in Attachment A.
- (2) For selling or offering for sale in California, battery operated products containing SBCS identified in paragraph I(5), whose model numbers are identified in Attachment A that did not meet the energy efficiency standards prescribed by section 1605.3, were not certified to MAEDbS as required by section 1606, or were not marked per section 1607(d)(10), and, in consideration of the factors listed in paragraph I(7) and I(8) above, ITW shall pay as an administrative civil penalty the total sum of \$300,000.00 by check made payable to the California Energy Commission by February 1, 2020. 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) ITW also agrees to take each of the following actions for any and all SBCS 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 listings are kept current and up to date.
 - c. Use a distinct model number for any of the basic models listed in Attachment A that have been redesigned to meet energy efficiency standards.

- (4) In consideration of the payment specified above, CEC hereby releases ITW and its predecessors, successors, affiliates, parents, related corporations, insurers, and assigns, and each of their respective past, present, and future officers, directors, shareholders, members, managers, agents, attorneys, representatives, third-party administrators, servants, employees, distributors, and dealers (Released Parties) from any and all claims, demands, obligations, judgments, actions, causes of action, and liabilities 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. This Agreement shall apply to and be binding upon the Released Parties.

(5) This Agreement constitutes the entire agreement and understanding between CEC and ITW 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 CEC and ITW concerning these claims.

(6) 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.

(7) ITW further agrees that if the subject matter of this Agreement comes before CEC in an administrative adjudication, neither any member of CEC, nor the Executive Director, shall be disqualified because of prior consideration of this Agreement.

(8) 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.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) This Agreement is effective upon signature by a representative of ITW with authority to bind the company, and signature by the Executive Director of CEC. The Parties agree that fax or scanned signatures and multiple signature pages are acceptable for purposes of executing this Agreement, which may be signed in counterparts.

SETTLEMENT AGREEMENT AND RELEASE
CALIFORNIA ENERGY COMMISSION AND ILLINOIS TOOL WORKS INC.
Page 5 OF 7

California Energy Commission


By: 

Name: Drew Bohan

Title: Executive Director

Date: 1-29-20

Illinois Tool Works Inc.

By: 

Name: Norman D. Finch, Jr.

Title: Senior Vice President, General Counsel &
Secretary

Date: January 22, 2020

Attachment A

This agreement covers the following brands and corresponding model numbers:

Avery Weigh-Tronix Brand: Battery Charger Systems

24H3502-201C1	24S350-200B1	AWT05-500954	AWT05-508935
AWT05-800055			

Brecknell Brand: Digital Scales and Battery Charger Systems

816965002535	816965002542	816965002559	816965005758
816965005765	816965005772	816965006632	816965001804
816965001811	816965001538	816965001620	816965006052
816965001637	816965001644	816965005352	816965004645
816965002696	AWT05-506154	AWT05-506155	816965004805
816965005086	816965004942	816965001330	

Dillon Brand: Force Measurement Equipment and Battery Charger System

36321-0048	36321-0055	36321-0063	
------------	------------	------------	--

Duo Fast Brand: Cordless Power Tool

904600			
--------	--	--	--

E.H. Wachs Brand: Handheld Controller

79-422-01			
-----------	--	--	--

Miller Brand: Air Purifying Respirators Systems, Coolbelt Welding Helmet Cooling System, and Battery Charger Systems

259385	261659	264877	264878
264879	264882	264573	264575
244132	245230	245238	

Magnaflux Brand: Cordless Inspection Tool

611710			
--------	--	--	--

Paslode Brand: Cordless Power Tools and Battery Charger Systems

902400	902600	902661	902667
902672	905600	916000	918000
918100	902400BK	902400FR	902400UR
902600FR	902600UR	905600BK	905600FR
905600QP	905600UR	916000FR	918000FR
219413	902000UR	902000FR	901000UR
900600UR	900600FR	900078NT	904500
902000	901230	901000	900600
900200			

Ramset Brand: Cordless Power Tools and Battery Charger System

B0022	G2	T3IF-6	T3MAG
T3SS	TF1200		

Slime Brand: Cordless Inflators

40041	40033	40028	
-------	-------	-------	--

Stockade Brand: Cordless Power Tool

ST4iNA1			
---------	--	--	--