

**DOCKETED**

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<b>Project Title:</b>	Settlement Agreements
<b>TN #:</b>	233532
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<b>Description:</b>	N/A
<b>Filer:</b>	Amanda Harris
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## 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 W.W. Grainger, Inc. (Grainger), with a place of business at 100 Grainger Parkway, Lake Forest, Illinois 60045-5202, 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),<sup>1</sup> 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 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 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) Grainger offers several models of pool pump and motor combinations (pool pumps), replacement pool pump motors (pool motors), evaporative coolers, portable luminaires, state-regulated light emitting diode lamps (SLEDs), and general service lamps (GSLs) for sale in California, either directly or through contractors, retailers or distributors.

(4) The pool pumps, pool motors, evaporative coolers, portable luminaires, SLEDs, and GSLs that Grainger distributes are subject to the testing, efficiency, design, marking, and certification requirements for each appliance class as described in paragraph I(1) above.

(5) From July 2015 to November 2018, Grainger sold or offered for sale to pool construction contractors, retailers or distributors pool pumps and pool motors in California, that were not listed in MAEDbS as required in section 1606, and 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 [Horsepower] 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 ... "

CEC inspected the Dayton brand pool pump model 5PXE6A 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.

From July 2015 to January 2019, Grainger sold or offered for sale to contractors, retailers, or distributors, evaporative coolers and portable luminaires that were not listed in MAEDbS as required in section 1606.

From January 2018 to January 2019, Grainger sold or offered for sale to contractors, retailers or distributors SLEDs that were not listed in MAEDbS as required in section 1606.

(6) CEC asserts that if the alleged facts described in the above Recitals were proven through adjudication, it could impose penalties for each violation alleged, obtain injunctive relief to prohibit Grainger from continuing to sell or offer for sale, the non-compliant pool pumps, pool motors, evaporative coolers, portable luminaires, SLEDs, and GSLs 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 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 Grainger cooperated with CEC in the investigation by implementing measures to prevent the sale of pool pumps, pool motors, evaporative coolers, portable luminaires, and SLEDs, and GSLs, and by providing to CEC sales data of allegedly non-compliant units. The efforts by Grainger saved CEC 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) Grainger disputes and denies any liability arising from the facts presented in the above Recitals and 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, which are incorporated into this section by reference, and the mutual agreements set forth below, CEC and Grainger agree as follows:

(1) This Agreement covers the pool pump, pool motor, evaporative cooler, portable luminaire, SLED, and GSL models listed in Attachment A.

(2) For selling or offering for sale in California, pool pumps, pool motors, evaporative coolers, portable luminaires, SLEDs, and GSLs 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, were not certified to MAEDbS as required by section 1606; and, in consideration of the factors listed in paragraph I(7) and I(8) above, Grainger shall pay as an administrative civil penalty the total sum of \$125,399.00 by check made payable to the California Energy Commission by June 15, 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) Grainger 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. Update Grainger's Product Information Management System to include CEC-related product attributes including the verification of a supplier's successful registration of a product in the MAEDbS database prior to eligibility for sale by Grainger.
- b. Conduct quarterly audits of products regulated under CEC Appliance Efficiency Regulations in partnership with Verisk 3E (or equivalent 3rd party consultant) and timely rectify any audit findings of errata and/or non-compliance in Grainger's product offering, systems, and procedures.
- c. Engage and train Grainger suppliers and team members about the Appliance Efficiency Regulations and application of the Regulations to their respective products.
- d. Implement measures on Grainger's webpage to conspicuously inform customers if a product is prohibited from sale in California under the Appliance Efficiency Regulations, on the product listing webpage and blocking or canceling orders of non-compliant products to California addresses.
- e. Monitor and timely ensure compliance with regulatory changes, in partnership with Verisk 3E (or equivalent 3rd party consultant), through a quarterly review of CEC website for regulatory changes or updates, subscription to all CEC List Serves and quarterly newsletter, and application of Verisk 3E's (or equivalent 3rd party consultant) monitoring and reporting services to track supplier/product compliance status.
- f. Review all new product categories quarterly to determine whether any of the new products are regulated under Title 20. Provide regulatory updates into research phase of portfolio review process for product categories regulated under Title 20.

(4) This Agreement shall apply to and be binding upon Grainger and its principals, officers, directors, receivers, trustees, employees, successors and assignees, and upon CEC 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, CEC hereby releases Grainger 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 time periods and appliances identified in paragraph I(5), whose model numbers are identified in Attachment A.

(6) This Agreement constitutes the entire agreement and understanding between CEC and Grainger 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 Grainger 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) Grainger 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.

(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.


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(14) This Agreement is effective upon signature by a representative of Grainger 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.

**California Energy Commission**

By:   
Name: Drew Bohan  
Title: Executive Director  
Date: June 17, 2020

**W.W. Grainger, Inc.**

By:   
Name: Matthew Fortin  
Title: V.P. President, M&A  
Date: 16 Jun 20

Attachment A

<b>Lumapro Portable Luminaire Models</b>						
33HP79	33HP81	33HP81	4PD53	6MNT5	6MNT6	
6W983						
6W984						
<b>Lumapro State-Regulated LED Lamp Models</b>						
44ZX52	44ZX54	44ZX55	49ZC10	52XJ19	52XJ20	52XJ21
52XJ22	4RZZ2	4RZT9		4RZU3	2FNW1	2FNZ8
	2FNZ9					
4RZX4	4RZV5	39P450	39P451	39P452	39P453	39P454
<b>Dayton Evaporative Cooler Models</b>						
4RNN6	4RNN7	4RNN8	4RNN9	4RNP1	4RNP2	
4RNP3						
4RNP4	4RNP5	4RNP7	4RNP8	4RNP9		
	4RNR1	4RNR2				
4RNR4						
<b>Dayton Pool Pump and Pool Motor Models <math>\geq 1</math> HP</b>						
5PXG6	5PXG7	5PXE6	5PXD0	5PXD5	5PXC4	
5PXE5						
5PXC5	5PXE0	5PXD7	5PXE4	5PXE8		
5PXC9	5PXF0					
5PXD8	5PXC6	5PXC8	5PXC7	5PXD6		
5PXD4						
<b>Dayton Pool Pump and Pool Motor Models <math>&lt; 1</math> HP</b>						
5PXC2	5PXC3	5PXG5	5PXG4	5PXE3		
5PXE2	5PXD2					
5PXD3						