

DOCKETED

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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 Hayward Industries, Inc. (Hayward), with a place of business at One Hayward Industrial Drive, Clemmons, North Carolina 27012, 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 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-complying appliances from MAEDbS, as set forth in section 1608, and the issuance of administrative civil penalties under section 1609.

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

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

(5) From January 2015 to June 2018, Hayward sold or offered for sale through retailers or distributors pool pumps 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 [Horsepower] or greater which are manufactured on or after January 1, 2010, shall have the capability of operating at two or more

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

speeds with a low speed having a rotation rate that is no more than one-half of the motor's maximum rotation rate..."

(6) Based on the above Recitals, CEC, through adjudication, could impose penalties for each violation alleged, obtain injunctive relief to prohibit Hayward from continuing to sell or offer for sale, non-compliant pool pumps 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 Hayward cooperated with CEC in the investigation by implementing measures to prevent the sale of single speed pool pumps for use in residential pools, and by providing to CEC sales data of non-compliant units. The efforts by Hayward 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) Hayward 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 Hayward agree as follows:

- (1) This Agreement covers the Hayward pool pump model numbers listed in Exhibit A.
- (2) For selling or offering for sale in California, pool pumps identified in paragraph I(5), whose model numbers are identified in Exhibit 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, Hayward shall pay as an administrative civil penalty the total sum of two hundred forty-nine thousand one hundred fifty-two dollars (\$249,152.00) by check made payable to the California Energy Commission by January 3, 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) Hayward 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 listings 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 Hayward's webpage(s) informing customers of the restriction on single speed pool pumps to California customers, and including a statement on all invoices to California customers for single speed residential pool pump motors with a pool pump motor capacity of 1 HP [Horsepower] or greater that "pumps and replacement motors that are single speed and one total HP or greater cannot be sold, offered for sale or installed in a residential pool for filtration use in California, Title 20 CCR section 1601-1609".

- (4) This Agreement shall apply to and be binding upon Hayward and its principals, officers,

directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, 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 Hayward and its parent corporation, 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 Exhibit A.
- (6) This Agreement constitutes the entire agreement and understanding CEC and Hayward 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 Hayward 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) Hayward 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

Exhibit A

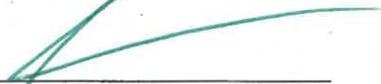
This agreement covers the following Hayward Pool Products pool pump model number(s):

SP2307X10	SP2810X1551	SP3015X20AZ	SP3210EE	SP3220X25BH
SP2310X15	SP2815X20	SP3020EEAZ	SP3210X15	SP3225X30
SP2315X20	SP2815X2051	SP3020X25AZ	SP3210X15BH	SP323063EE
SP2607X10	SP3007X10AZ2	SP3025EEAZ	SP3215EE	SP3230EE
SP2610X15	SP3010EEAZ	SP3025X30AZ	SP3215X20	SP3250EE
SP2610X1551	SP3010X15AZ	SP3025X30G51	SP3215X2051	
SP2615X20	SP3015EEAZ	SP303063AZ	SP3215X20BH	
SP2807X10	SP3015X202AZ	SP3207X10	SP3220EE	
SP2810X15	SP3015X2051	SP3207X10BH	SP3220X25	

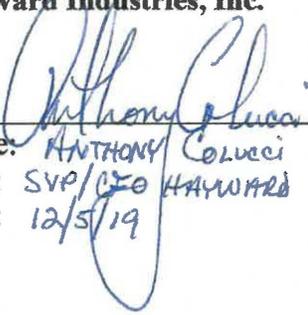
for or against either Party on the ground that said Party drafted it.

(14) This Agreement is effective upon signature by a representative of Hayward 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: 12-9-19

Hayward Industries, Inc.

By: 
Name: ANTHONY COLUCCI
Title: SVP/CEO HAYWARD
Date: 12/5/19