

DOCKETED

Docket Number:	16-ENFORCE-03
Project Title:	Settlement Agreements
TN #:	232971
Document Title:	Waterway Plastics, Inc Settlement Agreement and Release
Description:	N/A
Filer:	Amanda Harris
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	5/13/2020 2:42:49 PM
Docketed Date:	5/13/2020

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 Waterway Plastics, Incorporated (Waterway), with a place of business at 2200 East Sturgis Road Oxnard, California 93030, 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) Waterway manufactures several models of residential pool pump and motor combinations (pool pumps) and pool motors that it sells or offers for sale in California solely through retailers or distributors.

(4) Waterway 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 October 2014 to October 2019, CEC alleges Waterway sold or offered for sale through retailers or distributors pool pumps and pool motors in California, that were not listed in MAEDbS as required in section 1606, and that did not meet the design standards set forth in section 1605.3(g)(5)(B).

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

"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 ... "

CEC inspected the Waterway brand pool pump model PH1150-3 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, CEC, through adjudication, could impose penalties for each violation alleged, obtain injunctive relief to prohibit Waterway 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 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 Waterway cooperated with CEC 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 CEC sales data of non-compliant units. The efforts by Waterway 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) Waterway 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 Waterway agree as follows:

- (1) This Agreement covers the Waterway pool pumps and pool motors as indicated 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 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, Waterway shall pay as an administrative civil penalty the total sum of \$80,000.00. Payment shall be made by check made payable to the California Energy Commission, in two monthly payments as shown below:

Payment Number	Due Date	Amount
1	May 15, 2020	\$40,000.00
2	June 15, 2020	\$40,000.00

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

It is agreed that if Waterway, 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 Waterway, 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 Waterway, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of Waterway's, its subsidiary's, or its parent company's properties, or if any deposit account or other property of Waterway'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 Waterway, 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) Waterway 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 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. Continue to implement Waterway's compliance plan, as approved by CEC. This plan includes informing customers of the restriction on single speed pool pumps and pool motors by the following methods: labeling packaging, labeling products, maintaining a statement on Waterway's webpage(s), catalog and mobile application warnings, and written notification to all direct buyers in California.
- d. Timely update and redistribute any relevant labeling, publications, and written notifications referenced in subparagraph c (above) to correct substantive errata, to inform new customers and direct buyers, and/or to comply with any amendments to the applicable Regulations.

(4) This Agreement shall apply to and be binding upon Waterway 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.

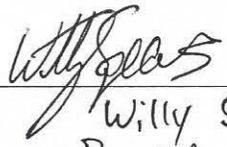
(5) In consideration of the payment specified above, CEC hereby releases Waterway and its parent corporation, principals, directors, officers, agents, employees, shareholders, subsidiaries, predecessors, and successors from any and all claims for violations of California Public Resources Code section 25402 and California Code of Regulations, Title 20, Article 4, sections 1601-1609 (Appliance Efficiency Regulations), relating to the appliances and time period 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 Waterway 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 Waterway 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) Waterway 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.
- (14) This Agreement is effective upon signature by a representative of Waterway 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: May 7, 2020

Waterway Plastics, Incorporated

By: 
Name: Willy Spears
Title: President
Date: 5-1-20

Attachment A

Pool Pumps and motors:

SMF-107	CHAMPS-120	CHAMPE-120	SVL56S-115	PD-VSC270
SMF-110	CHAMPS-125	SVL56E-110	SVL56S-120	PH1150-3
SMF-115	CHAMPS-220	SVL56E-115	SVL56S-125	PH1150-6
SMF-120	CHAMPE-107	SVL56E-120	SVL56S-215	PH1075-6
CHAMPS-110	CHAMPE-110	SVL56E-130	SVL56S-220	PH1100-3
CHAMPS-115	CHAMPE-115	SVL56S-110	PD-VSC165	PH1100-3PSNP
PH1100-3R	PH1100-3RSNP	PH1100-6	PH1100-6R	PH1100-H6
PH1150-3R	PH1150-3RSNP	PH1150-6P	PH1150-6R	PH1200-3R
PH1200-6	PH1200-6R	PHC1100-25		