

DOCKETED

Docket Number:	16-ENFORCE-03
Project Title:	Settlement Agreements
TN #:	242327
Document Title:	Dawn Kitchen and Bath Products Inc Settlement Agreement and Release
Description:	N/A
Filer:	Amanda Harris
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	3/15/2022 11:00:28 AM
Docketed Date:	3/15/2022

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is entered into between the California Energy Commission (CEC), with its principal office at 715 P Street, Sacramento, California 95814, and Dawn Kitchen and Bath Products, Inc. (Dawn), with a place of business at 27688 Industrial Boulevard, Hayward, California 94545 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-complying appliances from MAEDbS, as set forth in section 1608, and the issuance of administrative civil penalties under section 1609.

(3) Dawn manufactures and sells several models of plumbing fittings that it sells or offers for sale in California, either directly or through retailers or distributors.

(4) Dawn plumbing fittings 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 September 2021, Dawn sold or offered for sale through retailers or distributors lavatory faucets, kitchen faucets, and showerheads in California, that were not listed in MAEDbS as required in section 1606 and were not marked as required in section 1607.

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

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

(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 Dawn cooperated with CEC in the investigation by promptly testing, certifying, and marking the units; 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 Dawn saved CEC time and resources in investigating the violations and minimized the impacts on the competitive business environment in California, from the non-compliant units.

(9) Dawn 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 Dawn agree as follows:

(1) This Agreement covers the following Dawn plumbing fittings models:

Kitchen Faucets:

AB50 3787MAG	AB50 3262BN	AB50 3707C	AB27 3602BN	AB50 3732C
AB50 3787MB	AB50 3262MB	AB50 3703C	AB27 3602C	AB50 3732BN
AB50 3787BN	AB50 3715BN	AB50 3702BN	AB08 3157BN	AB50 3262MAG
AB50 3787C	AB50 3715C	AB50 3702C	AB08 3157C	AB50 3262C
AB50 3778MAG	AB50 3714BN	AB50 3670BN	AB 3156BN	AB50 3709C
AB50 3778MB	AB50 3714C	AB50 3670C	AB08 3156C	AB50 3708BN
AB50 3778BN	AB75 3383BN	AB50 3364BN	AB08 3155BN	AB50 3708C
AB50 3778C	AB75 3383C	AB50 3364C	AB08 3155C	AB50 3707BN
AB50 3777MAG	AB53 3498BN	AB50 3316BN	AB08 3152BN	AB50 3079BN
AB50 3777MB	AB53 3498C	AB50 3316C	AB08 3152C	AB50 3079C
AB50 3777C	AB50 3729BN	AB50 3351BN	AB06 3296C	AB33 3241BN
AB50 3777BN	AB50 3729C	AB50 3351C	AB06 3292DBR	AB33 3241C
AB50 3776MAG	AB50 3712BN	AB50 3178C	AB06 3292BN	AB04 3276BN
AB50 3776C	AB50 3712C	AB50 3091BN	AB06 3292C	AB04 3276C
AB50 3776BN	AB50 3711BN	AB50 3091C	AB04 3277	AB30 3788BN
AB50 3776MB	AB50 3711C	AB50 3084BN	AB04 3277BN	AB30 3788C
AB50 3732MB	AB50 3709BN	AB50 3084C	AB04 3277C	

Showerheads:

RSS0510800-8	RSS0930100-8	HSS0560400-7	R37060402	HSS0590600-8
RSS0510600-8	SHM090400	HSS0560100-7	HSS0590100-8	R37060602
RSS0510400-8	SHM080100	SHM090100	R37060102	HSS0590400-8
R38060402	SH2770500DBR	SH0200400	HS0060102	HS0460402
R38060602	HSD010402	SH0200100	HS0020402	HS0460102
R38060802	HSG010402	SH0170400	HS0020102	HS0060402
RSS0510100-8	HSG010102	SH0170100	SH0060400	SH0080100
R38060102	HSD010102	SH0110400	HS0620402	SH0070400
HSS0590800-8	HS0710402	SH0110100	HS0620102	SH0070100
R37060802	HS0710102	SH0080400		

Lavatory Faucets:

AB78 1158C	AB37 1565BN	AB41 1475CPW	AB75 1368C	AB67 1540BN
AB78 1158BN	AB37 1565C	AB37 1565CPW	AB75 1368BN	AB67 1540C
AB78 1158MB	AB41 1472CPW	AB27 1600CPW	AB16 1035C	AB53 1495BN
AB37 1566C	AB67 1809BN	AB27 1600BN	AB16 1035BN	AB12 1018BN
AB781158C	AB67 1809C	AB27 1600C	AB03 1035C	AB53 1498BN
AB03 1035BN	AB13 1018C	AB13 1018BN	AB53 1498C	AB53 1495C
AB12 1018C				

(2) For selling or offering for sale in California, plumbing fittings identified in paragraph I(5), whose model number are identified in paragraph II(1) that were not certified to MAEDbS as required by section 1606, and were not marked per section 1607, and, in consideration of the factors listed in paragraph I(7) and I(8) above,

Dawn shall pay as an administrative civil penalty the total sum of \$19,700.00. Payment shall be made by check payable to the California Energy Commission, in six monthly payments of \$3,283.33 each, as shown below:

Payment Number	Due Date	Amount
1	March 1, 2022	\$3,283.35
2	April 1, 2022	\$3,283.33
3	May 1, 2022	\$3,283.33
4	June 1, 2022	\$3,283.33
5	July 1, 2022	\$3,283.33
6	August 1, 2022	\$3,283.33

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
 715 P Street
 Sacramento, California 95814-5512

Effect of untimely payment: If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable. In addition, if CEC takes action to enforce this Agreement,

Dawn shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

It is agreed that if Dawn, 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 Dawn, 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 Dawn, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of Dawn's, its subsidiary's, or parent company's properties, or if any deposit account or other property of Dawn'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 Dawn, 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) Dawn 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.

(4) This Agreement shall apply to and be binding upon Dawn 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 Dawn 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 time frame and appliances identified in paragraph I(5), whose model numbers are identified in paragraph II(1).

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

Dawn Kitchen & Bath Products, Inc.

By: 
Name: Drew Bohan
Title: Executive Director
Date: 3/4/2022

By: 
Name: Zijun Zheng
Title: Office Manager
Date: 02/04/2022