

DOCKETED

Docket Number:	16-ENFORCE-03
Project Title:	Settlement Agreements
TN #:	242584
Document Title:	Winslyn Industries Settlement Agreement and Release
Description:	N/A
Filer:	Amanda Harris
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	4/6/2022 11:10:56 AM
Docketed Date:	4/6/2022

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 Winslyn Industries (Winslyn), with a place of business at 1850 East Fabyan Parkway, Batavia, Illinois 60510, 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) Winslyn distributes and sells several models of Winflo range hood residential exhaust fans that it sells or offers for sale in California, either directly or through retailers or distributors.

(4) Winslyn residential exhaust fans are subject to the testing, marking, and certification requirements for this appliance class as described in paragraph I(1) above.

(5) From January 2017 to November 2021, Winslyn sold or offered for sale through retailers or distributors residential exhaust fans in California, that were not listed in MAEDbS as required in section 1606.

(6) Based on the above Recitals, CEC, through adjudication, could impose penalties for each violation alleged, obtain injunctive relief to prohibit Winslyn from continuing to sell or offer for sale, unlisted residential exhaust fans 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 Winslyn cooperated with CEC in the investigation by promptly testing and certifying the units; notifying retailers and removing the unlisted units from the California market; and by providing to CEC sales data of unlisted units. The efforts by Winslyn saved CEC time and resources in investigating the violations and minimized the impacts on the competitive business environment.

(9) Winslyn 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 Winslyn agree as follows:

(1) This Agreement covers the Winslyn residential exhaust fan models listed in the attachment.

(2) For selling or offering for sale in California, residential exhaust fans identified in paragraph I(5), whose model number are identified in the attachment that 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,

Winslyn shall pay as an administrative civil penalty the total sum of \$19,998.00. Payment shall be made by electronic transfer to the California Energy Commission, in six monthly payments of \$3,333.00 each, as shown below:

Payment Number	Due Date	Amount
1	April 1, 2022	\$3,333.00
2	May 1, 2022	\$3,333.00
3	June 1, 2022	\$3,333.00
4	July 1, 2022	\$3,333.00
5	August 1, 2022	\$3,333.00
6	September 1, 2022	\$3,333.00

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

It is agreed that if Winslyn, 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 Winslyn, 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 Winslyn, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of Winslyn's, its subsidiary's, or parent company's properties, or if any deposit account or other property of Winslyn'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 Winslyn, 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) Winslyn also agrees to take each of the following actions for any 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, if applicable.
- 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 Winslyn 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 Winslyn 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 the Attachment.

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

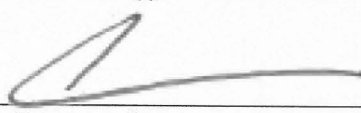
(8) Winslyn further agrees that if the subject matter of this Agreement comes before CEC in an administrative adjudication, neither any member of CEC, nor the Executive Director, shall be disqualified because of prior consideration of this Agreement.

(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 Winslyn 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: 3/25/22

Winslyn Industries

By: 
Name: William Stuebner
Title: President
Date: 3/14/22

Attachment

W101B30	W103B30D	W103C30	W103C30D	W112B36DHP
W101B36	W103B36D	W101C30	W101C30D	W112B30DHP
W102B30	WE106B30D	W101C30F	W101C36D	W112B30DHPB
W102B36	WEH106B30	W101C36	W152C30D	W112B30DP
W102B30G	WEH106B36	W101C30BL	W152C36D	W112C30DHP
W102B36G	WH101B30D	W102C30	W153C30HR	W112C30DHPB
W103B30	WH101B36D	W102C36	W155C30DR	W112C30DP
W103B36	WEH107B30	W103C30F	W101C30DF	W111C30F
W104A30	WEH107B36	W103C36	W101C36DF	W112C30F
WE107B30G	W101C30BLF	W103C30BL	W103C30DF	HDW01C30
WH102B30	W101C36F	W104C30	W152C30DF	HDW01C30B
WH102B36	W102C30F	W104C36	W153C30HRF	HDW01C30F
WH102B30G	W102C36F	HDW03B30	W155C30DRF	HDW01C36
WH102B36G	W103C30BLF	HDW03B36	WR001B30	HDW03C30
WEH117B36	W103C36F	HDI01B30	WR001B30F	HDW03C30B
WH114B30	W104C30F	HDI01B36	WR001B36	HDW03C30F
WH114B36	W104C36F	UR012B30DHP	WR001B36F	HDW03C36
WH101B30	UR011B30L	UR012B30DHPB	WR002B30S	HDW04C30
WH101B36	UR011B30S	UR012B30DP	WR002B30SF	IR003C30DR
WH140B30	UR011C30	UR012B36DHP	WR002B30L	IR003C30DRF
WH140B36	UR011C30F	UR012C30DHP	WR002B30LF	IR003C36DR
IR001B36F	UR012B30L	UR012C30DHPB	WR002B36S	IR003C36DRF
IR002B30	UR012B36S	UR012C30DP	WR002B36SF	IR052C30D
IR002B30F	UR012C30F	LRW03B30D	WR002B36L	IR052C30DF
IR002B30G	UR012C30L	LRW03B30DC	WR002B36LF	IR052C36D
IR002B30GF	UR012C30	LRW03B36D	WR003B30	IR052C36DF
IR002B36	UR012C30S	LRW03B36DC	WR003B30F	IR053C30DR
IR002B36F	LRU11B30L	LRI06B30	WR003B36	IR053C30DRF
IR002B36G	LRU11B30S	LRI06B36	WR003B36F	IR053C36DR
IR002B36GF	LRU11C30	LRI07B30	WR004A30	IR053C36DRF
IR014B30	LRU11C30C	LRI07B36	WR004A30F	IR055C30DR
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IR014B36	LRU12B30S	LRI01B30DC	IRE017B36	WR055C30DR
IR014B36F	LRU12B36S	LRI01B36D	IR001B30	WR055C30DRF
IR040B30	LRU12C30P	LRI01B36DC	IR001B36	IR055C36DR

LRI02B30C	LRU12C30PC	LRW03B30C	IR001B30F	IR055C36DRF
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LRI02B30LC	LRU12C30S	LRW03B36C	LRI55C30DR	LRW02B30G
LRI02B36	LRI02B36LC	LRW07B30	LRI55C30DRC	LRW02B30GC
LRI02B36C	LRI01B36	LRI17B36	LRI55C36DR	LRW02B36
LRI02B36L	LRI01B36C	LRI01B30	LRI55C36DRC	LRW02B36C
LRW03B30	LRI02B30	LRI01B30C	LRW01B36	LRW02B36G
LRW02B36GC	LRI53C30HRC	LRW01B30	W103C36SR	LRI40B36C
W112B36D	W122B30	W108C30	WH103C30DR	WH101C30SR
W112B30D	W108C30F	W108C30B	WH103C36DR	W101C30SR
W112A1B30D	W110A1C30F	W108C30W	WH152C30D	W101C36SR
W112C30P	W122C30F	W110A1C30	WH152C36D	WH101C36SR
W112C30S	W101B30D	W122C30	WH153C30HR	WH103C30DRF
W112C30L	W101B30DF	W101C30SRF	WH153C36HR	WH103C36DRF
W111C30	W101B36D	W101C36SRF	WH155C30HR	WH152C30DF
W111B30	W101B36DF	WH101C30SRF	WH155C36HR	WH153C30HRF
W111A1B30D	W103B30DF	WH101C36SRF	W122B30F	WH153C36HRF
W112C30	W103B36DF	HDU12C30DP	HDU08C30	WH155C30DR
HDI01C30SR	WH101B30DF	WR001C30D	HDU08C30B	WH155C30DRF
HDI01C36SR	WH101B30DL	WR001C30DF	HDU08C30F	WH155C30HRF
WR001B30D	WH101B30DLF	WR001C36D	HDU08C30W	WH155C36DR
WR001B30DF	WH101B36DF	WR001C36DF	HDU10C30	WH155C36DRF
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WR001B36DF	WH101B36DLF	WR003C30DF	UR012B30S	WR001C30BL
WR003B30D	HDW03C30D	WR052C30D	UR022B30	WR001C30BLF
WR003B30DF	UR008C30	WR052C30DF	UR022B30F	WR001C30F
WR003B36D	UR008C30B	WR052C36D	WR001C30SR	WR001C36
WR003B36DF	UR008C30F	WR053C30HR	WR001C30SRF	WR001C36F
WRE006B30D	UR008C30W	WR053C30HRF	WR001C36SR	WR002C30
IRE006B30	UR010C30	WR003C30SR	WR001C36SRF	WR002C30F
IRE006B36	UR010C30F	WR003C30SRF	IR001C30SR	WR002C36
IRE007B30	UR022C30	WR003C36SR	IR001C30SRF	WR002C36F
IRE007B36	UR022C30F	WR003C36SRF	IR001C36SR	WR003C30
IR001B30D	LRW01C30D	LRU12B30DHP	IR001C36SRF	WR003C30BL
IR001B30DF	LRW01C30DC	LRU12B30DHPB	LRU22B30	WR003C30BLF
IR001B30DL	LRW01C36D	LRU12B30DP	LRU08C30	WR003C30F
IR001B30DLF	LRW01C36DC	LRU12B36DHP	LRU08C30B	WR003C36

IR001B36D	LRW03C30D	LRU12C30DHP	LRU08C30C	WR003C36F
IR001B36DF	LRW03C30DC	LRU12C30DHPB	LRU08C30W	WR004C30
IR001B36DL	LRW52C30D	LRU12C30DP	LRU10C30	WR004C30F
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LRI03C30DR	LRW52C36D	LRW01C30SRC	LRU22C30	WR004C36F
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LRI03C36DR	LRW53C30HR	LRW01C36SRC	LRI14B30	LRW03C30SRC
LRI03C36DRC	LRW53C30HRC	LRI01C30SR	LRI14B30C	LRW03C36SR
LRI52C30D	LRW55C30DR	LRI01C30SRC	LRI14B36	LRW03C36SRC
LRI52C30DC	LRW55C30DRC	LRI01C36SR	LRI14B36C	LRW01B36C
LRI52C36D	IR040B30F	LRI01C36SRC	LRI40B30	LRW02B30
LRI52C36DC	IR040B36	1655314	LRI40B30C	W103C30SRF
LRI53C30HR	IR040B36F	W103C30SR	LRI40B36	W103C36SRF
1655313	W103B36F	WH114B30F	LRW01C36	LRW03C30C
W101B30F	W104A30F	WH114B36F	LRW01C36C	LRW03C36
W101B36F	WH101B30F	WH140B30F	LRW02C30	LRW03C36C
W102B30F	WH101B36F	WH140B36F	LRW02C30C	LRW04C30
W102B30GF	WH102B30F	LRW01C30	LRW02C36	LRW04C30C
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W102B36GF	WH102B36F	LRW01C30BLC	LRW03C30	LRW04C36C
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