

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
)	
Nexgrill Industries, Inc.,)	CPSC DOCKET NO. 07--00007
)	
a corporation.)	
)	
)	
)	

I. Settlement Agreement and Order

1. This Settlement Agreement is made by and between the staff (“the staff”) of the U.S. Consumer Product Safety Commission (“the Commission”) and Nexgrill Industries, Inc. (“Nexgrill”), a corporation, in accordance with 16 C.F.R. § 1118.20 of the Commission’s Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (“CPSA”). This Settlement Agreement and the incorporated attached Order settle the staff’s allegations set forth below.

II. The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the CPSA, 15 U.S.C. §§ 2051-2084.

3. Nexgrill is a corporation organized and existing under the laws of the State of California with its principal corporate office located at 280 Machlin Ct., Walnut, CA 91789. Nexgrill is a manufacturer of gas grills, patio heaters, outdoor fire pits, and kitchen food prep carts.

III. Allegations of the Staff

4. Between December 2003 and March 2005, Nexgrill manufactured and sold nationwide approximately 16,000 Nexgrill Gas Grills (“gas grills”), Model Number 720-0025.
5. The gas grills are “consumer products” and, at the times relevant herein, Nexgrill was a “manufacturer” of those consumer products, which were “distributed in commerce,” as those terms are defined in sections 3(a)(1), (4), (11), and (12) of the CPSA, 15 U.S.C. § 2052(a)(1), (4), (11), and (12).
6. Between April 2004 and October 2005, Nexgrill received 20 reports of gas grill fires, including three reports of minor burn injuries.
7. Although Nexgrill obtained sufficient information to support the conclusion that the gas grills contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death at least 10 months before reporting, it failed to immediately inform the Commission of such defect or risk as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. § 2064(b)(2) and (3).
8. By failing to furnish information as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b), Nexgrill knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

9. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Nexgrill is subject to civil penalties for its failure to make a timely report under section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

III. Nexgrill's Response

10. Nexgrill denies the staff's allegations that it violated the CPSA as set forth in paragraphs 4 through 9 above.

11. Nexgrill enters into this Settlement Agreement to resolve the staff's allegations without the time and expense of litigation. By agreeing to this settlement, Nexgrill does not admit any of the staff's allegations of any fault, liability, or statutory or regulatory violation.

12. Nexgrill voluntarily, and without the Commission or the staff having first requested information from Nexgrill, reported the above matter under section 15(b) of the CPSA, 15 U.S.C. § 2064(b) and offered to implement a voluntary corrective action that was accepted by the staff.

IV. Agreement of the Parties

13. The Commission has jurisdiction over this matter and over Nexgrill under the Consumer Product Safety Act, 15 U.S.C. §§ 2051-2084.

14. In settlement of the staff's allegations, Nexgrill agrees to pay a civil penalty in the amount of \$300,000.00 as set forth in the attached incorporated Order.

15. The parties enter this Settlement Agreement for settlement purposes only. The Settlement Agreement does not constitute an admission by Nexgrill or a determination by the Commission that Nexgrill violated the CPSA's reporting requirements.

16. Upon provisional acceptance of this Agreement by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it in the Federal Register in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 calendar days, the Agreement will be deemed finally accepted on the 16th calendar day after the date it is published in the Federal Register.

17. Upon final acceptance of the Agreement by the Commission and issuance of the Final Order, Nexgrill knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (i) an administrative or judicial hearing; (ii) judicial review or other challenge or contest of the validity of the Commission's actions; (iii) a determination by the Commission as to whether Nexgrill failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact or conclusions of law; and (v) any claims under the Equal Access to Justice Act.

18. The Commission may publicize the terms of the Settlement Agreement and Order.

19. This Settlement Agreement and Order shall apply to, and be binding upon, Nexgrill and each of its successors and assigns.

20. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. §§ 2051-2084, and a violation of this Order may subject Nexgrill to appropriate legal action.

21. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or contradict its terms.

22. This Settlement Agreement shall not be waived, changed, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced.

23. If after the effective date hereof, any provision of this Settlement Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement and Order, such provisions shall be fully severable. The rest of the Settlement Agreement and Order shall remain in full effect, unless the Commission and Nexgrill determine that severing the provision materially

changes the purpose of the Settlement Agreement and Order.

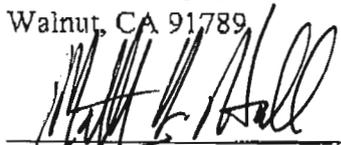
NEXGRILL INDUSTRIES, INC.

Dated: 1/2/07



Sherman Lin
Vice President, Operations
Nexgrill Industries, Inc.
280 Machlin Court
Walnut, CA 91789

Dated: Jan 3, 2007



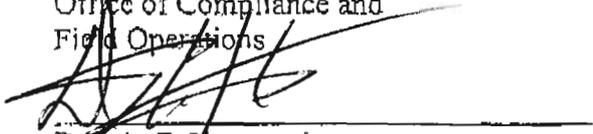
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Dated: 01/03/07



Dennis C. Kacoyanis
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UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

_____))
In the Matter of))
Nexgrill Industries, Inc.,) CPSC DOCKET NO. 07-C0002
a corporation.))
_____))

ORDER

Upon consideration of the Settlement Agreement entered into between Nexgrill Industries, Inc., (“Nexgrill”) and the staff of the Consumer Product Safety Commission (“the Commission”); and the Commission having jurisdiction over the subject matter and Nexgrill; and it appearing that the Settlement Agreement and Order is in the public interest, it is

ORDERED that the Settlement Agreement be, and hereby, is accepted; and it is FURTHER ORDERED that Nexgrill shall pay a civil penalty of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) in three installments as follows: SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) shall be paid within twenty (20) calendar days of service of the Final Order upon Nexgrill; ONE-HUNDRED THOUSAND DOLLARS (\$100,000.00) shall be paid within one (1) year of service of the Final Order upon Nexgrill; and ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00) shall be paid within two (2) years of service of the Final Order upon Nexgrill. Upon the failure of Nexgrill to make any of the foregoing payments when due, the entire amount of the civil penalty shall become due and payable, and

interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. § 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 12th day of January, 2007.

BY ORDER OF THE COMMISSION



Todd A. Stevenson, Secretary
Consumer Product Safety Commission

Finally accepted and final Order issued on the _____ day of _____, 2007.

BY ORDER OF THE COMMISSION

Todd A. Stevenson, Secretary
Consumer Product Safety Commission