

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "Agreement") is entered into between the State of California Air Resources Board (hereinafter "CARB"), with its principal office at 1001 "I" Street, Sacramento, California, and The Plastics Group, Inc. (hereinafter "TPG") with its principal place of business at 7409 S. Quincy Street, Willowbrook, Illinois 60527.

RECITALS

1. California Code of Regulations, title 13, section 2467.2(c), provides:

Except as provided in Section 2467.3, every portable fuel container, spout, or portable fuel container and spout produced on or after July 1, 2007 that is manufactured for sale, advertised for sale, sold, or offered for sale in California or that is introduced, delivered or imported into California for introductions into commerce and that is subject to any of the standards prescribed in this article and documents incorporated by reference therein, must be certified for use and sale by the manufacturer through the Air Resources Board and covered by an Executive Order issued pursuant to Section 2467.2(d).

2. California Code of Regulations, title 13, section 2467(b) provides, in pertinent part,

no person shall sell, supply, offer for sale, advertise, or manufacture for sale in California a portable fuel container or spout or both portable fuel container and spout on or after July 1, 2007 unless said portable fuel container or spout or both portable fuel container and spout is covered by an Executive Order issued pursuant to this article.

3. California Code of Regulations, title 13, section 2754 and 2755, establish permeation standards for fuel tanks on small off-road equipment.

4. California Code of Regulations, title 13, section 2467.5(c) states, in pertinent part,

each manufacturer of a portable fuel container or portable fuel container spout subject to and complying with Section 2467.2(c) must clearly display on each spill-proof system:

(3) a representative code identifying the Executive Order Number issued by the Air Resources Board for the portable fuel container or portable fuel container and spout.

5. Health and Safety Code section 43016 states, in pertinent part,

A person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed thirty-seven thousand five hundred dollars (\$37,500) for each such action pursuant to this part. Violations involving portable fuel containers or small off-road engines shall be subject to a civil penalty not to exceed five hundred dollars (\$500) per unit. For a manufacturer or distributor who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, the payment of the penalty and making the product compliant with applicable emission control laws may be required by the executive officer of the state board as conditions for the continued sale in this state of those products regulated by the state board pursuant to this division.

6. In May 2017, CARB staff purchased and delivered a new sample batch of Briggs & Stratton 228T 2+ gallon Portable Fuel Containers ("228T Subject Units") for retesting to ensure compliance going forward from a 2016 settlement with TPG.
7. On November 14, 2017, CARB's Monitoring and Laboratory Division reported in a memo that all the sample batch of 228T Subject Units failed to meet the diurnal performance standard. TPG disputes this conclusion.
8. CARB alleges that a total of about 200,000 228T Subject Units were shipped and sold into California commerce.
9. CARB alleges that TPG has not obtained a valid Executive Order of Certification for its model TPG05 fuel tank ("TPG05 Subject Units") suitable for small off-road engines as meeting the current permeation standards.
10. CARB alleges TPG manufactured various portable fuel containers under the Briggs & Stratton name ("B&S Subject Units") that do not have the CARB Executive Order located anywhere on the container, be it embossed or on the label, as required by California Code of Regulations, title 13, section 2467.5(c). CARB issued TPG Notices of Violation #8954, #8852, #8854, #8951, #8856, #8955 and #8752 for the B&S Subject Units, which were sold or offered for sale in California.
11. CARB alleges that the sale, supply, offer for sale, advertisement, or manufacture for sale in California of the 228T, TPG05, and B&S Subject Units were unlawful and in violation of California Code of Regulations, title 13, section 2467, subdivision (b).
12. TPG promptly and fully cooperated with CARB in the investigation of this matter.

13. CARB alleges that if the facts described in recital paragraphs 1-10 were proven, civil penalties could be imposed against TPG, as provided in Health and Safety Code section 43016.
14. TPG admits the facts presented in recital paragraphs 1-11, but denies any liability arising therefrom.
15. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this Agreement, without the need for formal litigation. CARB accepts this Agreement in termination of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against TPG for the violations alleged above, and in consideration of the other terms set out below, CARB and TPG agree as follows:

1. As a condition of this Settlement Agreement, TPG shall pay the total sum of one hundred thousand dollars (\$100,000) to the California Air Pollution Control Fund upon execution of this Settlement Agreement. Payment shall be made (with the attached Payment Transmittal Form) by certified check payable to the **California Air Pollution Control** Fund and addressed to:

Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812-1436
2. TPG represents that it is aware of the statutory and regulatory authority cited in recital paragraphs 1-5, and agrees that it will not sell, supply, offer for sale, advertise, or manufacture for sale in California portable fuel containers or spouts or both portable fuel containers and spouts unless CARB certification has first been obtained.
3. This Agreement shall apply to and be binding upon TPG and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
4. Now, therefore, in consideration of the payment by TPG to the California Air Pollution Control Fund in the amount specified above, CARB hereby releases TPG and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors

from any and all claims that CARB may have based on the facts and allegations described in recital paragraphs 1-11, above. The undersigned represent that they have the authority to enter this Agreement.

5. This Agreement constitutes the entire agreement and understanding between CARB and TPG 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 CARB and TPG concerning these claims.
6. 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.
7. Advice of Counsel. 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.
8. 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.
9. Severability. 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 to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.
10. Waiver. 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. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.
11. 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.
12. This Agreement may be signed in counterparts, and its validity shall not be challenged on that basis. True and correct copies of signed counterparts shall be deemed effective as originals for all purposes.
13. **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires the CARB to provide information on the basis for the

penalties it seeks. This required information, which is provided throughout this settlement agreement, is summarized here.

The manner in which the penalty amount was determined, including a per-unit or per-vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43024.

The maximum per unit penalty in this case is \$500 per unit per strict liability violation. The penalty obtained in this case is less than \$00.50 per unit for 200,000 units where sales data was available, and for the units for which sales data was not available. This reflects the facts of TPG's financial situation, lack of available information about sales, and due to the company winding down.

Why a per-unit penalty is most appropriate for the violations.

The penalty provision being applied in this case is Health and Safety Code section 43016, because TPG is alleged to have manufactured and introduced portable fuel containers or spouts, or both portable fuel containers and spouts into commerce in California after July 1, 2007, in violation of California Code of Regulations, title 13, section 2467 et seq. An estimate significantly based on the number of units is appropriate where that information is available for many of the violations.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The provisions cited above do not prohibit emissions above a specified level. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available. However, since CARB concluded that the Subject Units did not meet the requirements, the emissions attributable to them are alleged to be illegal. In the interest of settlement and because of the time and expense involved, the parties elected not to do such testing.

14. TPG acknowledges that CARB has complied with SB 1402 in prosecuting and settling this case. Specifically, CARB has considered all relevant facts, including those listed at Health and Safety Code section 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being

assessed under a provision of law that prohibits the emission of pollutants at a specified level.

15. Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar case negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain period of time, considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.
16. The penalty in this case was based in part on confidential business information provided by TPG that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and TPG that CARB does not retain in the ordinary course of business either. The penalty also reflects CARB's assessment of the relative strength of its case against TPG, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that TPG may have secured from its alleged actions.
17. The undersigned represent that they have full power and authority to enter into this Agreement.

California Air Resources Board

By: _____

Name: Richard W. Corey

Title: Executive Officer

Date: _____

3/29/2018

The Plastics Group, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Michael A. Moore

CFO

6-29-18