

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "AGREEMENT") is entered into by and between the CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB"), with its principal office located at 1001 I Street, Sacramento, California 95814 and TPG PLASTICS, LLC (hereinafter "TPG"), with its principal place of business located at 7409 S Quincy Street, Willowbrook, Illinois, 60527 (collectively, the "PARTIES," or individually as a "PARTY").

RECITALS

1. The California Health and Safety Code mandates CARB to reduce emissions from vehicular and other mobile sources, including emissions of reactive organic gases, oxides of nitrogen, particulates, carbon monoxide, and toxic air contaminants through regulations of vehicle emission standards, in-use performance standards, and motor vehicle fuel specifications. (Health and Saf. Code §§ 43013, 43018.)
2. CARB adopted certification standards, test procedures, and administrative requirements in its *Portable Fuel Containers and Spill-Proof Spouts Regulation* to reduce emissions and spills from portable fuel containers. (Cal. Code Regs., tit. 13 § 2467 et seq.)
3. Any person who sells, supplies, offers for sale, advertises or manufactures for sale in California portable fuel containers or spouts or components, for use in California, must certify these containers, spouts, or components for use and sale and obtain an Executive Order. (Cal. Code Regs., tit. 13, §§ 2467, 2467.2.)
4. Each manufacturer of the portable fuel container and spout that is subject to the regulation must clearly display and permanently emboss on each portable fuel container the month and year of manufacture and the CARB Executive Order Number. (Cal. Code Regs., tit. 13, § 2467.5.)
5. If the Executive Officer finds any manufacturer, distributor, or retailer manufacturing for sale, advertising for sale, selling, or offering for sale in the State of California a portable fuel container system or its components that do not comply with the requirements set forth in the *Portable Fuel Containers and Spill-Proof Spouts Regulation*, he or she may enjoin the manufacturer, distributor, or retailer, assess penalties, and/or revoke any Executive Order issued for the noncompliant portable fuel container system or its components. (Cal. Code Regs., tit. 13, § 2467.8, Health & Saf. Code § 43017.)
6. Failure to comply with any requirements of the *Portable Fuel Containers and Spill-Proof Spouts Regulation* is a violation of state law which may result in penalties up to five hundred dollars (\$500) for strict liability violations, respectively, for each unit. (Cal. Code Regs., tit. 13, § 2467.9; Health & Saf. Code § 43016.)

7. In May of 2019, CARB field representatives inspected a portable fuel container retailer in California and found 2-plus gallon and 1-plus gallon portable fuel containers (SUBJECT UNITS) manufactured by TPG without an Executive Order Number embossed or printed on the container resulting in seven hundred eighty-four (784) non-compliant SUBJECT UNITS being shipped into California.
8. CARB alleges that the SUBJECT UNITS are not legal in California because they failed to meet the requirements of the *Portable Fuel Containers and Spill-Proof Spouts Regulation*.
9. TPG is incorporated in Illinois and doing business in California.
10. CARB alleges that if the allegations described in recital paragraphs 1–9 were proven, civil penalties could be imposed against TPG for each unit and each day.
11. TPG admits the facts in recital paragraphs 1–10, but denies any liability arising thereunder.
12. 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. TPG has taken or agrees to take the actions enumerated below within the Terms and Release for the purpose of settlement and resolution of this matter with CARB. CARB accepts this AGREEMENT in termination and settlement of this matter.

TERMS AND RELEASE

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

13. TPG shall pay one thousand five hundred sixty-eight dollars (**\$1,568.00 USD**) as a penalty by check or wire transfer to the **California Air Pollution Control Fund** within **30 days** from the date this AGREEMENT is fully executed.

If payment is by check, TPG's shall send the check and "Settlement Agreement Payment Transmittal Form" to:

California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812-1436

If payment is by wire transfer, TPG shall send the wire transfer and attached "Settlement Agreement Payment Transmittal Form" to:

State of California Air Resources Board
c/o Bank of America, Inter Branch to 0148
Routing No. 0260-0959-3 Account No. 01482-80005
Notice of Transfer: Edna Murphy Fax: (916) 322-9612
Reference: CARB Case #C00246

Wire Transfer Fee: TPG is responsible for any bank charges incurred for processing wire transfers.

14. TPG shall send the original signed and dated AGREEMENT, copy of payment, the Settlement Agreement Payment Transmittal Form, and any future mailings or documents required per the terms of this AGREEMENT to:

Mr. Nathan Biasotti
California Air Resources Board
Enforcement Division
8340 Ferguson Ave
Sacramento, California 95828
Nathan.Biasotti@arb.ca.gov

15. TPG represents that it is aware of the statutory and regulatory authority cited in recital paragraphs 1–6, and agrees that any products sold, supplied, offered for sale, advertised, or manufactured for sale in California will comply with all applicable standards.
16. TPG agrees that the penalty imposed on TPG by CARB is nondischargeable under 11 U.S.C. § 523 (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.
17. This AGREEMENT shall apply to and be binding upon TPG and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this AGREEMENT.
18. 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 shareholders, 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 relating to the SUBJECT

UNITS and based on the allegations described in recital paragraphs 1–9.

19. 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.
20. The effective date of this AGREEMENT shall be the date upon which it is fully executed.
21. 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.
22. 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.
23. 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.
24. Each provision of this AGREEMENT is severable, and in the event that any provision of this AGREEMENT is held to be invalid or unenforceable in any jurisdiction, the remainder of this AGREEMENT remains in full force and effect.
25. 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.
26. 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.
27. This AGREEMENT shall further serve to toll any statute of limitations until all terms and conditions of this AGREEMENT have been fulfilled.

28. Penalty Determination

Below is the basis for the assessed penalties (Health & Saf. Code § 39619.7.)

The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit basis for the penalty.

The penalties in this matter were determined in consideration of all relevant circumstances, including the eight statutory factors, (Health & Saf. Code § 42403, 43024), The per-unit penalty in this case is a maximum of \$500 per unit per strict liability violation. The penalty obtained in this case is \$2 per unit for 784 SUBJECT UNITS. The penalty in this matter reflects the fact that this was a first time violation for TPG under TPG's new ownership; TPG's good faith and expeditious efforts to correct the alleged violations; and TPG's cooperation with the investigation.

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 CARB's assessment of the relative strength of its case against TPG, and the desire to avoid the uncertainty, burden and expense of litigation. Penalties in other cases may be smaller or larger depending on the unique circumstances of the case.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

The penalty provision being applied in this case is Health and Safety Code section 43016, because TPG sold, and/or offered for sale, and/or advertised portable fuel containers that violated the standards required for certification *Portable Fuel Containers and Spill-Proof Spouts Regulation*. (Cal. Code Regs., tit. 13, § 2467.5(a).)

Whether the penalty is 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 time of use, is not available. However, since the portable fuel containers did not meet the applicable certification standards for sale in California, emissions attributable to them are illegal and excess as well.

29. TPG acknowledges that CARB has complied with Health and Safety Code section 39619.7, and considered the relevant factors in Health and Safety Code sections 42403 and 43024.

30. The penalty in this case was based in part on confidential business information provided by TPG that is not retained by CARB 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.

31. Each of the undersigned represents that he or she has full power and authority to enter this AGREEMENT.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

TPG Plastics, LLC

By: _____ /S/ _____

By: _____ /S/ _____

Name: Todd P. Sax, D.Env.

Name: Saquib Toor

Title: Chief, Enforcement Division

Title: President, TPG Plastics, LLC

Date: 11/14/2019

Date: 10/28/2019