

SETTLEMENT AGREEMENT AND FINAL GENERAL RELEASE OF CLAIMS

This Settlement Agreement and Final General Release of Claims ("Agreement") is entered into between the California Air Resources Board (CARB), an agency of the State of California with its principal location at 1001 I Street, Sacramento, California 95814; the Bay Area Air Quality Management District (BAAQMD), a California local government agency with its principal location at 375 Beale Street, Suite 600, San Francisco, California 94105; and McWane, Inc., individually and doing business as AB&I Foundry (McWane), a corporation with its principal location at 2900 Highway 280, Suite 300, Birmingham, Alabama 35223 (collectively, the "Parties," and individually, "Party"). It is the Parties' mutual intent to fully and finally resolve all claims that have been made or could have been made and to have agreement that McWane shall have no further liability of any kind or nature, at any time, for any reason, relating to the Released Claims, as defined herein.

Neither the Agreement nor payment pursuant to the Agreement shall constitute or be construed as a finding, adjudication, or acknowledgement of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation. Except as expressly set forth herein, nothing in this Agreement shall prejudice, waive, or impair any right, remedy, or defense McWane, CARB, or BAAQMD may have in this or any other legal proceeding.

LEGAL BACKGROUND

- (1) BAAQMD is responsible for the issuance of air quality permits for stationary emission sources in the Bay Area and the regulation of resulting air emissions, including but not limited to odors. CARB also has responsibility for protecting public health from the harmful effects of air pollution, including but not limited to odors.
- (2) California state law prohibits discharges of any materials into the air that create a public nuisance by annoying and/or harming large numbers of individuals or the public as a whole. Specifically, Health and Safety Code section 41700, subdivision (a) provides:
 - [A] person shall not discharge from any source whatsoever quantities of air contaminants or other material that cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public, or that cause, or have a natural tendency to cause, injury or damage to business or property.
- (3) The term "air contaminant" means "any discharge, release, or other propagation into the atmosphere and includes, but is not limited to, smoke, charred paper,

dust, soot, grime, carbon, fumes, gases, odors, particulate matter, acids, or any combination thereof.” (Health & Saf. Code, § 39013.)

- (4) Any person who violates Health and Safety Code section 41700 is liable for civil penalties. The amount of penalties for illegal emissions of air contaminants is set forth in Health and Safety Code sections 42402 through 42402.3 (adjusted to account for inflation pursuant to Health and Safety Code section 42411) and escalates based on the intent of the violator. (Health & Saf. Code, §§ 41700, 42402-42402.3, 42411.)
- (5) Each day during any portion of which a violation occurs is a separate violation for which penalties may be imposed under Health and Safety Code sections 42402 through 42402.3. (Health & Saf. Code, §§ 42402-42402.3.)

CASE BACKGROUND

- (6) At all relevant times, McWane was a corporation organized under the laws of Delaware and conducted business in the State of California as AB&I Foundry, a foundry and supporting facilities or operations located at 7825 San Leandro Street in Oakland, California 94621 (hereinafter referred as to “AB&I Foundry”).
- (7) CARB and BAAQMD allege that McWane’s operation of the AB&I Foundry created a public nuisance - beginning in at least 2012, and continuing until the foundry’s closure in October 2022. CARB and BAAQMD allege that during that time, AB&I Foundry’s operations generated emissions, including odors, that were emitted into the surrounding Oakland community causing injury, detriment, nuisance, and annoyance to a considerable proportion of that community, and endangering the comfort, repose, and health of the same. CARB and BAAQMD allege that the emissions, including odors, from AB&I Foundry created a public nuisance in violation of Health and Safety Code section 41700 every day that the foundry was in operation.
- (8) Based on community odor complaints and other supporting evidence, BAAQMD issued Notices of Violation (NOV) for creating a public nuisance in violation of Health and Safety Code section 41700 and BAAQMD Regulation 1-301 to AB&I Foundry on November 14, 2019, June 30, 2020, and June 21, 2021. On February 13, 2020, after CARB independently received, investigated, and confirmed a number of community odor complaints, CARB issued an NOV to AB&I Foundry for creating a public nuisance in violation of Health and Safety Code section 41700.
- (9) On May 19, 2022, BAAQMD referred its NOV Nos. A55865 (issued November 14, 2019), 55866 (issued June 30, 2020), and 58844 (issued June 21, 2021) to CARB for civil enforcement.

- (10) This Agreement resolves all claims and all claims that could have been brought by CARB or BAAQMD against McWane arising out of the operation of AB&I Foundry regarding emissions of air contaminants, including odors, and/or alleged permit violations, including but not limited to claims based on the violations alleged in BAAQMD NOV Nos. A55865 (dated November 14, 2019), 55866 (dated June 30, 2020), and 58844 (dated June 21, 2021), and the CARB NOV dated February 13, 2020, bearing Case Identification Number I00285.
- (11) Neither this Agreement nor any of the related negotiations or proceedings is or shall be construed as or deemed to be evidence of any admission of any kind with respect to the matters or claims alleged. McWane disputes and denies any fault or liability for the violations of law alleged herein.
- (12) CARB and BAAQMD represent that they have not referred any claims to other agencies for enforcement other than the referral identified in Paragraph 9, and are not aware of any other ongoing investigations, pending litigation, or intended future litigation in connection with AB&I Foundry other than the Alameda County Superior Court cases of "Communities for a Better Environment v. McWane, Inc., individually and doing business as AB&I," and "People of the State of California v. McWane, Inc., individually and doing business under the fictitious name of AB&I," consolidated under Case No. 21CV004188 (collectively, the "Prop 65 Litigation"), and the United States Environmental Protection Agency's NOV dated April 25, 2022.
- (13) McWane ceased all operations at AB&I Foundry in October 2022. The foundry has been demolished and the real property on which AB&I conducted operations has been sold to a third-party. McWane represents to with its closure of the AB&I Foundry in October 2022, McWane ceased all metal melting, casting, and related foundry activities in the State of California, and no longer conducts any business activities In the State of California that qualify as a major source of regulated emissions under the Federal Clean Air Act.
- (14) The Parties have engaged in extensive arms-length negotiations regarding settlement, including with the assistance of a mediator. In consideration of the foregoing, the uncertainties, costs and delays of litigation, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the Released Claims, as further defined herein, and voluntarily agree to resolve this matter by means of this Agreement. In order to resolve the alleged violations identified herein, McWane agrees to take the actions specified below within the Terms and Conditions. This Agreement shall serve as termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of the release in Paragraph 36, CARB and BAAQMD shall receive payment as set forth as follows:

- (15) Settlement Amount. McWane shall pay a civil penalty of five hundred and forty thousand dollars (\$540,000.00 USD) to CARB, shall pay a civil penalty of sixty thousand dollars (\$60,000.00 USD) to BAAQMD, and agrees to fund Supplemental Environmental Projects (SEPs) in the total amount of six hundred thousand dollars (\$600,000.00 USD) to be split between two recipient organizations for SEPs in the East Oakland community. Three hundred thousand dollars (\$300,000.00 USD) shall be administered by the Rose Foundation for Communities and the Environment (SEP Recipient/Administrator), and a SEP in the amount of three hundred thousand dollars (\$300,000.00 USD) shall be administered by the Roots Community Health Center (SEP Recipient/Administrator), for a total settlement of one million two hundred thousand dollars (\$1,200,000.00 USD). The \$1.2 million represents the total payment to be made by McWane in connection with this Agreement. McWane shall have no further liability for any costs, expenses, fees, or sums of any kind beyond its payment of \$1.2 million as set out in Paragraphs 15 and 16. McWane shall make all payments within 45 calendar days from the entry of a final voluntary judgment (whether styled as a consent judgment, stipulated judgment, or similar) resolving the Prop 65 Litigation. In the event that a final voluntary judgment is not entered in the Prop 65 Litigation within one hundred and eighty (180) calendar days of the Effective Date, either CARB or McWane may revoke this Agreement thirty (30) days after providing notice of their intent to do so to the other Parties in accordance with Paragraph 21 (Notices). Upon revocation, the resolution of claims, payment obligations, releases of claims, and covenant not to sue set forth in Paragraphs 10, 14-17, and 36-37 shall be null, void, and entirely without legal effect. Any time limits, whether in law or equity, for the assertion of any and all of CARB's and BAAQMD's claims released under this Agreement, are hereby tolled from the Effective Date until the earlier of the date that McWane completes all monetary payments required by Paragraphs 15-17, or the date that is thirty (30) calendar days after CARB or McWane provide notice of their intent to revoke this Agreement (Tolling Period). The Tolling Period shall not be included in computing the running of any time limits, whether in law or equity, including but not limited to any statute of limitations, statute of repose, or doctrine of laches potentially applicable to any action brought by or on behalf of CARB or BAAQMD regarding the claims released under this Agreement.

- (16) Civil Penalty Payment Method. McWane shall pay the civil penalty amount due to CARB by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. McWane shall pay the civil penalty amount due to BAAQMD by wire transfer using instructions provided separately by BAAQMD, or by check payable to "Bay Area Air Quality Management District". Payment to CARB shall be accompanied by the Payment Transmittal Form to ensure proper processing. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB or BAAQMD will provide notice to McWane in accordance with Paragraph 21 (Notices). After payment of the civil penalty, McWane shall have no further rights or responsibilities with respect to the distribution of these funds.
- (17) SEP Payment Method(s). McWane shall fund the SEPs identified in Paragraph 15 (Settlement Amount) by wire transfer or check, payable to each SEP Recipient/Administrator identified in Paragraph 15 (Settlement Amount) using instructions provided separately by CARB in Payment Transmittal Forms. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to McWane in accordance with Paragraph 21 (Notices). McWane shall have no responsibility, obligation, liability for, or standing to object to the use of the SEP funds after payment is made as provided for in this Agreement. As of the date of payment of the SEP funds, CARB and BAAQMD hereby release and shall be deemed to have released McWane for all claims with respect to the administration, allocation, calculation, investment, distribution, or expenditure of the SEP funds. It is expressly understood and agreed that after McWane pays the SEP funds, any issues arising in connection with such funds, including but not limited to, issues regarding the administration, allocation, calculation, investment, distribution, or expenditure of the SEP funds shall in no way affect the validity of this Agreement.
- (18) Prohibition Against Financial Benefit. McWane agrees that by funding SEPs administered by Rose Foundation for Communities and the Environment and Roots Community Health Center, McWane will not receive any direct or indirect financial benefit.
- (19) Assignment of Rights. In the event a SEP Recipient/Administrator does not fully implement or complete a SEP in accordance with the terms of separate agreements between CARB and each SEP Recipient/Administrator, CARB shall be entitled to recover the full amount of the SEP funds paid by McWane from the SEP Recipient/Administrator, less any amount expended on the timely and successful

completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, McWane assigns any and all rights against a SEP Recipient/Administrator to CARB. After payment of the SEP funds, McWane shall have no further rights or responsibilities with respect to these funds, as more fully set out in Paragraph 17.

- (20) Documents. McWane shall promptly email the signed and dated Agreement, copies of proof of payment of the penalty and SEP funds, and copies of the Payment Transmittal Forms to the email addresses in Paragraph 21 (Notices).
- (21) Notices. Unless otherwise specified in this Agreement, whenever notifications, submissions, or communications are required by this Agreement, they shall be submitted in writing to the physical address and email address below:

For CARB:

Anna Davtyan
Counsel
California Air Resources Board
Legal Office
1001 I Street
Sacramento, CA 95814
anna.davtyan@arb.ca.gov

Ryan Hoffman
Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
Ryan.Hoffman@doj.ca.gov

For BAAQMD:

Alexander Crockett
General Counsel
Joel Fried
Assistant Counsel
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
acrockett@baaqmd.gov
jfreid@baaqmd.gov

For McWane:

McWane, Inc.
Attn: General Counsel
2900 Highway 280, Suite 300
Birmingham, AL 35223
chartman@mcwane.com

Ruben Castellón
RAF Law Group
133 Vista Lane
Watsonville, CA 95076
rcastellon@raflawgroup.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing and mailing.

- (22) Entirety. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties. This Agreement consists of 12 pages and 42 paragraphs.
- (23) Binding Effect. This Agreement binds McWane, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement, and BAAQMD and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (24) Effective Date. The effective date shall be the date upon which this Agreement is fully executed.
- (25) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Agreement.
- (26) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Agreement remains in full force and effect.
- (27) Choice of Law. 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.

- (28) Non-Discharge. The Parties understand that the penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 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.
- (29) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement.
- (30) Use of Agreement in Future Proceedings. This Agreement shall not be used, offered, or received into evidence in any action or proceeding for any purpose other than to enforce its terms. This provision does not apply to documents other than this Agreement, or to any factual information whether or not set forth in this Agreement.
- (31) Non-Waiver. The failure 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.
- (32) Intent to be Bound. The Parties represent that they have participated fully in the review and drafting of this Agreement; understand and accept all terms; enter into this Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Agreement; have agreed to this Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Agreement.
- (33) Effect of Settlement/Reservation of Rights.
- (a) Notwithstanding any other provision of this Agreement, CARB and BAAQMD reserve the right to bring an action to enforce the terms of this Agreement.
 - (b) This Agreement does not limit or affect the rights of McWane, CARB or BAAQMD against any third parties not covered by this Agreement, nor does it limit the rights of third parties not covered by this Agreement against McWane, except as otherwise provided by law. This Agreement shall not be construed to create rights in, or

grant any cause of action to, any third party not covered by this Agreement.

- (c) This Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. McWane is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits. CARB and BAAQMD do not, by its execution of this Agreement, warrant or aver in any manner that McWane's compliance with any aspect of this Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.
- (34) Venue. The Superior Court of California, located in the County of Alameda, shall hear any dispute between the Parties arising from this Agreement.
- (35) Counterparts and Electronic Signatures. This Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (36) Release. In consideration of full payment of the civil penalties and SEP payments and all other undertakings set forth above, and in consideration of the representations (in particular Paragraph 13 above), covenants, promises, terms and conditions herein, CARB and BAAQMD, for themselves alone and no other State, local, or federal public entity (with the explicit understanding this does not preclude McWane's right to assert any potential affirmative defense in any other potential action that could be pursued by another State agency, local or federal public entity based on, among other things, principles of res judicata or collateral estoppel), hereby release McWane from any Released Claims. "Released Claims" means all claims, costs, penalties, damages (including punitive damages), debts, demands, actions, suits, causes of action, controversies of any kind whatsoever, proceedings, causes of action, liens, allegations, expenses, liabilities, attorneys' fees, costs, losses and obligations of every nature, character and description, obligations, or claims against McWane relating in any way to the facts, events or circumstances described in the Legal Background and Case Background above of any kind of character whatsoever, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, suspected or unsuspected, foreseen or unforeseen, fixed or contingent, whether arising by law, equity, or otherwise, concerning, arising from or related, or pursuant to common law, statute or regulation. For purposes of this Paragraph 36 "McWane" includes McWane, its subsidiaries, parents, affiliates, divisions, predecessors, successors, assigns, officers, directors, managers, shareholders, employees, servants, representatives, agents, principals, consultants, contractors, insurers, accountants, and attorneys.

CARB and BAAQMD acknowledge that, in executing the release contained in this Agreement, they do so with full knowledge of any and all rights and benefits that they might otherwise have had under California Civil Code section 1542, and hereby waive and relinquish any and all such rights and benefits. CARB and BAAQMD acknowledge and agree that this waiver is an essential and material term hereof, without which this Agreement (including, without limitation, the release) would not have been entered into.

CARB and BAAQMD further acknowledge that they have been advised by legal counsel and are familiar with the provisions of California Civil Code section 1542, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

For the avoidance of doubt, the Parties' reference to California Civil Code section 1542 does not expand the scope of the Released Claims beyond those relating to the facts, events or circumstances described in the Legal Background and Case Background above.

- (37) Covenant Not to Sue. CARB and BAAQMD, in consideration of full payment of the civil penalties and SEP payments and all other undertakings set forth above, and in consideration of the representations (in particular Paragraph 13 above), covenants, promises, terms and conditions herein, for themselves alone and no other State, local, or federal public entity, release, discharge and covenant not to sue or take administrative action against McWane, based in whole or part upon any of the Released Claims defined in Paragraph 36. This language does not preclude McWane's right to assert any potential affirmative defense in any other potential action that could be pursued by another State agency, local or federal public entity based on, among other things, principles of res judicata or collateral estoppel. This Agreement may be plead as a full and complete defense to any action, demand, suit, or other claim based on the Released Claims.
- (38) Authority. The undersigned each represent that they have full authority to enter into this Agreement on behalf of the Party they are representing.

PENALTY BASIS

- (39) Per Unit Penalty. The per unit penalty in this case is a maximum of eleven thousand seven hundred ten dollars (\$11,710, adjusted for inflation) per day under Health and Safety Code section 42402 for alleged violations of Health and Safety Code section 41700. CARB alleges a penalty of \$1,200,000 over an unspecified number of days of alleged violation. This matter was not resolved on a per unit penalty basis.
- (40) Emissions. The provisions cited above do not prohibit emissions above a specified level. In this matter, it is not practicable to quantify the alleged excess emissions. CARB has alleged that the end-use did not meet the regulatory requirements.
- (41) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases against any potential entity might be smaller or larger depending on the unique circumstances of the case.
- (42) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by McWane or confidential settlement communications.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Steven S. Cliff, Ph.D.

Title: Executive Officer

Date: June 28, 2024

Bay Area Air Quality Management District

Signature: /S/

Name: Philip M. Fine, Ph.D.

Title: Executive Officer/Air Pollution Control Officer

Date: June 5, 2024

McWane, Inc., individually and doing business as AB&I Foundry

Signature: /S/

Name: Louis Coppedge

Title: Assistant Vice President and Counsel

Date: June 27, 2024