

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Briggs and Stratton, LLC (Briggs and Stratton), with its principal location at P. O. Box 702, Milwaukee, Wisconsin 53201 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates the reduction of emission of air pollution from off-road engines. (Health & Saf. Code §§ 43013; 43018.)
- (2) Regulation. CARB adopted the "*Evaporative Emission Requirements for Off-Road Equipment*" Regulation (Cal. Code Regs., tit. 13, §§ 2750-2774) (Evaporative Emissions Regulation) to reduce emissions of, inter alia, oxides of nitrogen (NOx) and hydrocarbons (HC) from off-road spark-ignited small off-road engines (SORE) rated at equal to or less than 19 kilowatts, and equipment utilizing such engines.
- (3) Regulatory Provisions. The Evaporative Emissions Regulation requires all SORE engines that are manufactured for sale or lease for use or operation in California; sold, leased for use, or operation in California; or delivered or imported into California for introduction into commerce in California must be equipped with an evaporative emissions control system that is certified according to the certification requirements and procedures; meets the diurnal emission and design standards, fuel cap performance standards, and carbon canister size requirements, is properly tested following all required test procedures; is properly labeled; and meets all warranty requirements. (Cal. Code Regs., tit. 13, § 2750-2774.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to five hundred dollars (\$500.00 USD) for each strict liability violation of the Evaporative Emissions Regulation, respectively, for each noncompliant SORE engine, equipment, fuel line, fuel tank, carbon canister, or equipment. (Cal. Code Regs., tit.13, § 2772; Health & Saf. Code § 43016.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Briggs and Stratton was organized under the laws of Delaware as a foreign limited liability company and conducted business in the State of California.
- (6) Allegations. CARB alleges that Briggs and Stratton violated the Evaporative Emissions Regulation by manufacturing for sale or lease for use or operation in California; selling, leasing for use, or operation in California; or delivering or importing into California for introduction into commerce in California SORE

equipment, for use in California that failed to comply with the requirements of the Evaporative Emissions Regulation by failing to meet the diurnal emission and design standards (Cal. Code Regs., tit. 13, § 2754), resulting in the violations, as outlined in Notice of Violation # EPES-2022-C00683. Additionally, CARB alleges Briggs and Stratton violated the Evaporative Emissions Regulation by manufacturing for sale or lease for use or operation in California; selling, leasing for use, or operation in California; or delivering or importing into California for introduction into commerce in California, certain model year 2020–2022 SOREs for use in California, which were not properly labeled (Cal. Code Regs., tit. 13, § 2759). CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against Briggs and Stratton for each and every SORE equipment and engine involved in the violations.

- (7) Acknowledgment. Briggs and Stratton admits to the facts in paragraphs 1 through 5, but denies CARB’s allegations and any liability resulting from said allegations, and has asserted certain factual and legal defenses to CARB’s allegations. This settlement agreement shall not constitute or be construed as an admission by Briggs and Stratton with respect to any question of fact or law raised by CARB, nor is it an admission of violation of any law, rule, regulation, or policy.
- (8) Consideration. 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 Settlement Agreement. In order to resolve the violations described herein, Briggs and Stratton has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against Briggs and Stratton for the alleged violations referred to above in the Legal Background and Case Background, and Briggs and Stratton’s agreement to complete all terms and conditions set forth below, CARB and Briggs and Stratton agree as follows:

- (9) Settlement Amount. Briggs and Stratton shall pay to CARB fifty-eight thousand six hundred fifty-seven dollars and twenty-two cents (\$58,657.22 USD), and agrees to fund two Supplemental Environmental Projects (SEP) entitled (a) Fresno TREES Phase 4 – Malaga Recreation Park in the amount of twenty-thousand two hundred dollars (\$20,200.00 USD), consistent with CARB’s SEP Policy; and (b) Community Based Monitoring and Assessment Program for Fresno Phase 2 in the amount of thirty-eight thousand four hundred fifty-seven dollars and twenty-two cents (\$38,457.22 USD), consistent with CARB’s SEP Policy, for a total settlement of one

hundred seventeen thousand three hundred fourteen dollars and forty-four cents (\$117,314.44 USD). Briggs and Stratton shall make all payments within 30 calendar days from the date CARB notifies Briggs and Stratton of the full execution of the Settlement Agreement.

- (10) Settlement Payment Method. Briggs and Stratton shall pay the settlement amount of \$58,657.22 USD to CARB set forth above by check, credit card, wire transfer, or CARB payment portal, using instructions provided separately by CARB in a Payment Transmittal Form. Payment shall be made payable to the "California Air Resources Board." CARB will deposit the settlement amount into CARB's 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. Briggs and Stratton is responsible for all payment processing fees that are in addition to the settlement payment. Payment shall be accompanied by the Payment Transmittal Form to ensure proper application. At the time payment is made, Briggs and Stratton shall email CARB with proof of payment, including a copy of the Payment Transmittal Form, to the email address for CARB listed in Paragraph 16 (Notices). Should payment instructions change, CARB will provide notice to Briggs and Stratton in accordance with Paragraph 16 below (Notices).
- (11) SEP Payment Method(s). Briggs and Stratton shall fund the \$20,200.00 USD SEP entitled Fresno TREES Phase 4 – Malaga Recreation Park by wire transfer, payable to the SEP Recipient Administrator, Tree Fresno, using instructions provided separately by CARB in a SEP Payment Transmittal Form. Briggs and Stratton shall also fund the \$38,457.22 USD SEP entitled Community Based Monitoring and Assessment Program for Fresno Phase 2 by wire transfer, payable to the SEP Recipient Administrator, Central California Environmental Justice Network, using instructions provided separately by CARB in a SEP Payment Transmittal Form. Briggs and Stratton is responsible for all payment processing fees that are in addition to the SEP payments. Payments shall be accompanied by the SEP Payment Transmittal Form to ensure proper application. At the time the SEP payments are made to the SEP Recipient Administrators, Briggs and Stratton shall provide CARB with proof of payments being made, including a copy of the SEP Payment Transmittal Forms, using the email address for CARB provided in Paragraph 16 (Notices). Should SEP payment instructions change, CARB will provide notice to Briggs and Stratton in accordance with Paragraph 16 (Notices).
- (12) Prohibition Against Financial Benefit. Briggs and Stratton has agreed that by funding the SEPs entitled Fresno TREES Phase 4 – Malaga Recreation Park and Community Based Monitoring and Assessment Program for Fresno Phase 2, Briggs and Stratton will not receive any direct or indirect financial benefit, and that whenever Briggs and Stratton publicizes or refers to the SEPs or the results of the SEPs, Briggs and Stratton will state that the SEPs are being undertaken as part of the settlement of a CARB enforcement action.

- (13) Assignment of Rights. In the event the SEP Recipients/Administrators do not fully implement or complete the SEPs in accordance with the terms of the SEP Agreements, CARB shall be entitled to recover the full amount of the SEPs from the SEP implementers, 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, Briggs and Stratton assigns any and all rights against the SEP implementers to CARB.
- (14) Other Relief. Briggs and Stratton shall forfeit 328.8 credits banked from evaporative family CPV2 as a result of its model year 2018 evaporative emission compliance test failure. Briggs and Stratton will submit within 30 calendar days from the date CARB notifies Briggs and Stratton of the full execution of the Settlement Agreement a revised final Averaging, Banking, and Trading credit balance sheet which will include a line item forfeiting credits per reasons of the settlement and an attached copy of the Settlement Agreement.
- (15) Documents. Briggs and Stratton shall promptly email or mail the signed and dated Settlement Agreement to the email address or physical address for CARB provided in Paragraphs 16 (Notices) and on the Payment Transmittal Form. Alternatively, Briggs and Stratton may email the signed and dated Settlement Agreement directly to the CARB Enforcement Investigator managing the settlement.
- (16) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board
Enforcement Division / Settlement Agreements
Vehicle, Parts, Consumer Products Enforcement Branch / Engine and
Parts Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov ([Send proof of payment here](#))

As to Briggs and Stratton:

Dan St. Martin
PO Box 702
Milwaukee, Wisconsin 53201-0702
stmartin.dan@basco.com

As to Briggs and Stratton's Legal Representation:

Michael R. Leslie, Partner
King and Spalding LLP
633 West Fifth Street, Suite 1600
Los Angeles, California 90071
mleslie@kslaw.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 or mailing.

- (17) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Briggs and Stratton shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (18) Repeat Violations. Briggs and Stratton agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (19) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 9 pages and 37 paragraphs.
- (20) Binding Effect. This Settlement Agreement binds Briggs and Stratton, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (21) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (22) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (23) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.

- (24) Choice of Law. This Settlement 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.
- (25) Non-Discharge. It is further agreed that the amounts described in this Settlement Agreement are non-dischargeable penalties 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.
- (26) 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 Settlement Agreement.
- (27) Non-Waiver. The failure to enforce any provision of this Settlement 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 Settlement 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 Settlement Agreement or otherwise provided by law.
- (28) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement 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 Settlement Agreement.
- (29) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (30) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (31) Release. In consideration of full payment of the civil penalty, and SEP payments, and all other undertakings above, CARB hereby releases Briggs and Stratton and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.

- (32) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

SETTLEMENT BASIS

- (33) Per Unit Penalty. The per unit penalty in this case is a maximum of five hundred dollars (\$500.00 USD) per action under Health and Safety Code section 43016, for violations of the Evaporative Emissions Regulation. (Cal. Code Regs., tit.13, § 2772; Health & Saf. Code § 43016.) The penalty of \$117,314.44 is for 1,644 noncompliant SORE equipment and 8,417 mislabeled SOREs. The per unit penalty in this case is approximately \$45.76 per noncompliant SORE equipment and \$5.00 per mislabeled SORE.
- (34) Emissions. The provisions cited above do prohibit emissions above a specified level. Without information on engine usage, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the SORE equipment and engines did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- (35) Aggravating and Mitigating Factors. The settlement payments in this matter were determined in consideration of among the issues, a voluntary disclosure by Briggs and Stratton, and 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 alleged 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 settlement payments 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 might be smaller or larger depending on the unique circumstances of the case.
- (36) Confidential Business Information. CARB may have based this settlement in part on confidential business information provided by Briggs and Stratton or confidential settlement communications.
- (37) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil claims of CARB for the alleged violations alleged in this Settlement Agreement.

- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Briggs and Stratton with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Briggs and Stratton with respect to:
- (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Briggs and Stratton to CARB.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
 - (v) Any criminal liability.
 - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Briggs and Stratton shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of Briggs and Stratton or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Briggs and Stratton, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Briggs and Stratton is responsible for achieving and maintaining compliance with all applicable

federal, State, and local laws, regulations, and permits; Briggs and Stratton's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Briggs and Stratton's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Steven S. Cliff, Ph.D.

Title: Executive Officer

Date: October 9, 2023

Briggs and Stratton, LLC

Signature: /S/

Name: Jenn Jin

Title: Director, Legal Affairs

Date: September 20, 2023