

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 at 1001 I Street, Sacramento, California 95814, and Scepter Manufacturing, LLC (hereinafter "SCEPTER"), with its principal place of business at 404 26th Ave NW, Miami, Oklahoma 74354 (collectively, "The Parties").

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 & Saf. Code §§ 43013 and 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 and 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. Health and Safety Code Section 43016(a)(1) states, "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."

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6. In November 2018, CARB field staff conducted inspections and found seven (7) portable fuel containers manufactured by SCEPTER that did not have a CARB Executive Order located anywhere on the container that were being sold or offered for sale at three (3) different locations in California. Staff issued three Notices of Violations (8857, 8858 and 8956) for the non-compliant portable fuel containers.
7. In January 2019, CARB sent a Cease and Desist letter to SCEPTER to halt all sales of the affected portable fuel containers.
8. In February 2019, SCEPTER informed CARB that a total of 1,980 non-compliant portable fuel containers were potentially shipped to California.
9. In March 2019, CARB issued Notice of Violation C00204 to SCEPTER documenting the non-compliant portable fuel containers.
10. SCEPTER promptly and fully cooperated with CARB in the investigation of this matter.
11. SCEPTER is headquartered in Oklahoma and is doing business in California.
12. CARB alleges that if the facts described in recital paragraphs 1-6 were proven, civil penalties could be imposed against SCEPTER, as provided in Health and Safety Code section 43016.
13. SCEPTER admits the facts presented in recital paragraphs 1-6, but denies any liability arising therefrom.
14. 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 RELEASE

In settlement of the claims described above and in consideration of CARB not filing a legal action against SCEPTER for the alleged violations referred to above, as well as other terms set out below, CARB and SCEPTER agree as follows:

15. Upon execution of this Agreement, SCEPTER shall pay the total sum of three thousand nine hundred and sixty dollars (**\$3,960.00**) as a penalty by certified check or wire transfer to the **California Air Pollution Control Fund** within **30 days** from the date it signs this Agreement.

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16. The signed Agreement and any future mailings or documents required per the terms of this Agreement shall be mailed to:

Tony Zeng
Air Resources Engineer
California Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, CA 91731

Each check shall be accompanied with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) and sent to:

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

Each wire transfer shall be accompanied with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) and sent 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 # C00204

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

Notification of each wire transfer shall be provided to:

Tony Zeng
California Air Resources Board
Enforcement Division
Tony.Zeng@arb.ca.gov
(626) 350-6505

17. If a payment or payment installment is not made within ten (10) business days of the date specified above, the entire remaining balance, plus a penalty interest rate of 10 percent per annum on the entire remaining balance from the date initially due shall become immediately due and payable without notice or demand.
18. SCEPTER represents that it is aware of the statutory and regulatory authority

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cited in recital paragraphs 1-4, and agrees that it will not sell, supply, offer for sale, advertise, or manufacture for sale in California portable fuel containers or spouts unless CARB certification has first been obtained. It further agrees to clearly display on each portable fuel container the month and year of manufacture and the CARB Executive Order number.

19. This Agreement shall apply to and be binding upon SCEPTER 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.
20. In consideration of the payment by SCEPTER to the California Air Pollution Control Fund in the amounts specified above, CARB hereby releases SCEPTER and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from all claims that are subject to this Agreement as described in the recitals above.
21. This Agreement constitutes the entire agreement and understanding between CARB and SCEPTER 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 SCEPTER concerning these claims.
22. The effective date of this Agreement shall be the date upon which it is fully executed.
23. 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.
24. It is further agreed that the stipulated penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7).
25. 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.
26. 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.
27. Each provision of this Agreement is severable, and in the event that any

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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 to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.

28. 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.
29. 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.
30. The parties agree that this Agreement may be executed by facsimile and in counterparts by the Parties and their representatives, and the counterparts shall collectively constitute a single, original document, notwithstanding the fact that the signatures may not appear on the same page.
31. The terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
32. This Agreement shall further serve to toll any statute of limitations until all terms and conditions of this Agreement have been fulfilled.

33. Penalty Determination

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

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 SCEPTER sold, and/or offered for sale, and/or advertised Portable Fuel Containers that violated the labeling requirements pursuant to California Code of Regulations, title 13, section 2467.5(a).

The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit or per vehicle 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.) The per unit penalty in this case is a maximum of \$500 per strict liability violation.

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The penalty obtained in this case is \$2 per unit for 1,980 units. The assessed penalty has been determined based on SCEPTER's cooperation, its history of compliance, and the timely efforts taken by the company to correct the issue. In addition, the units fully complied with the emission limits.

Penalties were determined based on the unique circumstances of this matter, considered together with the need to set penalties at levels sufficient to deter violations, the need to remove any economic benefit from noncompliance, and to obtain swift compliance. Further considerations include past penalties in similar cases and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be higher or lower depending on the unique circumstances of the case.

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. Since the violation involves a labeling requirement, we are unable to quantify the excess emissions that may have resulted therefrom.

34. SCEPTER acknowledges that CARB has complied with all provisions of Health and Safety Code section 39619.7, and considered the relevant factors in Health and Safety Code sections 42403.
35. The penalty in this case was based in part on confidential business information provided by SCEPTER 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 SCEPTER that CARB does not retain in the ordinary course of business either.
36. The undersigned represent that they have full power and authority to enter this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Scepter Manufacturing, LLC.

By: /s/ _____
Name: Todd P. Sax, D.Env.
Title: Chief, Enforcement Division
Date:

By: /s/ _____
Name:
Title:
Date: