

## **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 VP Racing Fuels, Inc., with its principal location at 10205 Oasis Street, San Antonio, Texas 78216 (collectively, the "Parties," or individually, "Party").

### **LEGAL BACKGROUND**

- (1) Purpose. 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, 43018.)
- (2) Regulation. CARB adopted certification standards, test procedures, and administrative requirements in its Portable *Fuel Containers and Spill-Proof Spouts Regulation* (Portable Fuel Container Regulation) to reduce emissions and spills from portable fuel containers. (Cal. Code Regs., tit. 13, § 2467 et seq.)
- (3) Regulatory Provisions. Any person who sells, supplies, offers for sale, advertises, or manufactures for sale in California portable fuel container systems or their components, including spouts, for use in California must certify these portable fuel container systems and their components for use and sale, obtain an executive order, and properly label the respective portable fuel container(s) or spout(s) with the month and year of manufacture and the CARB Executive Order number. (Cal. Code Regs., tit. 13, §§ 2467, 2467.2, 2467.5.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to six hundred eight dollars (\$608.00 USD) for each violation of the Portable Fuel Container Regulation, respectively, for each noncompliant portable fuel container system or its components. (Cal. Code Regs., tit. 13, § 2467-2467.9; Health & Saf. Code § 43016.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, VP Racing was organized under the laws of Texas as a corporation and conducted business in the State of California.
- (6) Allegations. CARB alleges that VP Racing violated the Portable Fuel Container Regulation by selling, supplying, offering for sale, advertising or manufacturing for sale in California portable fuel containers and spouts, for use in California, and failing to obtain Executive Orders, resulting in the violations, as outlined in Notice of Violation #EPES-2022-C00618. CARB alleges the VP Racing

Motorsport Container® did not comply with CARB regulatory provisions that require permanent embossment or permanent labeling with language indicating said containers or vessels are solely intended for use with non-fuel or non-kerosene products. CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against VP Racing for each and every noncompliant product involved in the violations.

- (7) Acknowledgment. VP Racing admits to the facts in paragraphs 1 through 6, 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 VP Racing 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. To resolve the violations described herein, VP Racing 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 VP Racing for the alleged violations referred to above in the Legal Background and Case Background, and VP Racing's agreement to complete all terms and conditions set forth below, CARB and VP Racing agree as follows:

- (9) Settlement Amount. VP Racing shall pay a civil penalty of three hundred five thousand three hundred seven dollars (\$305,307.00 USD), and agrees to fund a Supplemental Environmental Project (SEP) entitled Marine Vessel Speed Reduction Incentive Program Phase 3 in the amount of three hundred five thousand three hundred and seven dollars (\$305,307.00 USD), consistent with CARB's SEP Policy, for a total settlement of six hundred ten thousand six hundred fourteen dollars (\$610,614.00 USD). VP Racing shall make all payments within thirty (30) calendar days from the Notification Date.
- (10) Notification Date. The date upon which CARB notifies VP Racing according to Paragraph 17 (Notices), that the Settlement Agreement is fully executed or when CARB sends the fully executed Settlement Agreement to VP Racing.
- (11) Civil Penalty Payment Method. VP Racing shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to the "California Air Resources

Board," using instructions provided separately by CARB in a Payment Transmittal Form. VP Racing is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. 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 will provide notice to VP Racing in accordance with Paragraph 17 (Notices).

- (12) SEP Payment Method(s). VP Racing shall fund the SEP by wire transfer, payable to the SEP implementer/recipient, Ventura County Air Pollution Control District using instructions provided separately by CARB in a Payment Transmittal Form. VP Racing is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to VP Racing in accordance with Paragraph 17 (Notices).
- (13) Prohibition Against Financial Benefit. VP Racing has agreed that by funding the SEP entitled Marine Vessel Speed Reduction Incentive Program Phase 3, VP Racing will not receive any direct or indirect financial benefit, and that whenever VP Racing publicizes or refers to the SEP or the results of the SEP, VP Racing will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (14) Assignment of Rights. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, 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, VP Racing assigns any and all rights against the SEP implementer to CARB.
- (15) Documents. VP Racing shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty and/or SEP (if applicable), a copy of the Payment Transmittal Form(s) (if applicable) to the address or email in Paragraph 17 (Notices).
- (16) Other Relief. When VP Racing manufactures containers or vessels that are intended for non-fuel or non-kerosene products, it shall permanently emboss or permanently label the containers or vessels, as defined in 49 Code of Federal Regulations section 172.407(a), with language indicating said containers or vessels are solely intended for use with non-fuel or non-kerosene products. The following language complies with the aforementioned permanent embossment or permanent labeling requirement, "This container is solely intended for use

with non-fuel or non-kerosene products and must not be used to transport fuel or kerosene. For storage and transport of recyclable automotive fluids, non-potable water, feed attractants and other outdoor products.”

- (17) 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](mailto:Settlement_Agreement@arb.ca.gov)

As to VP Racing:

VP Racing Fuels, Inc.  
10205 Oasis Street  
San Antonio, Texas 78216  
[Contracts@vpracingfuels.com](mailto:Contracts@vpracingfuels.com)

As to VP Racing’s Legal Representation:

Charles H. Pomeroy  
StilesPomeroy LLP  
595 E. Colorado Blvd., Suite 211  
Pasadena, California 91101  
[CPomeroy@stilespomeroy.com](mailto:CPomeroy@stilespomeroy.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.

- (18) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, VP Racing shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys’ fees, and costs.
- (19) Repeat Violations. VP Racing agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (20) 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 38 paragraphs.

- (21) Binding Effect. This Settlement Agreement binds VP Racing, 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.
- (22) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (23) 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.
- (24) 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.
- (25) 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.
- (26) Non-Discharge. It is further agreed that the penalties described in this Settlement 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.
- (27) 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.
- (28) 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.

- (29) 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.
- (30) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (31) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile, or photocopied signatures shall be considered as valid signatures.
- (32) Release. In consideration of full payment of the civil penalty and SEP payment, and all other undertakings above, CARB hereby releases VP Racing 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 Paragraph 6 (Allegations) above.
- (33) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

### **PENALTY BASIS**

- (34) Per Unit Penalty. The per unit penalty in this case is a maximum of six hundred eight dollars (\$608.00 USD) per action under Health and Safety Code section 43016, for violations of the Portable Fuel Container Regulation. (Cal. Code Regs., tit. 13, § 2467-2467.9; Health & Saf. Code § 43016.) The penalty of \$610,614.00 is for 55,733 noncompliant portable fuel containers and 32,950 noncompliant fuel container spouts. The per unit penalty in this case is approximately \$8.00 per noncompliant portable fuel container and approximately \$5.00 per noncompliant fuel container spout.
- (35) Emissions. The provisions cited in Paragraph 6 (Allegations) above do not prohibit emissions above a specified level. Without information on usage and emission rates, it is not practicable to quantify the excess emissions.
- (36) 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 might be smaller or larger depending on the unique circumstances of the case.

(37) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by VP Racing or confidential settlement communications.

(38) Effect of Settlement/Reservation of Rights. The following shall apply:

- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against VP Racing 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 VP Racing with respect to:
  - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
  - (ii) Facts that were not disclosed by VP Racing 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, VP Racing 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 VP Racing 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 VP Racing, 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. VP Racing is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; VP Racing'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 VP Racing'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: Ellen M. Peter for Steven S. Cliff, Ph.D.

Title: Chief Counsel for Executive Officer

Date: March 22, 2024



**VP Racing Fuels, Inc**

Signature: /S/

Name: Alan B. Cerwick

Title: President

Date: March 12, 2024