

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 Boston Whaler, Inc., with its principal location at 100 Whaler Way, Edgewater, Florida 32141 (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 Emissions Requirements for Spark-Ignition Marine Watercraft with Gasoline-Fueled Engines*" Regulation (Cal. Code Regs., tit. 13, §§ 2850-2869) (SIMW Evaporative Regulation) to reduce emissions of oxides of nitrogen (NOx) and hydrocarbons (HC) from these off-road engines.
- (3) Regulatory Provisions. Manufacturers of new spark-ignition marine watercraft (SIMW) engines that are manufactured for sale, advertised for sale, sold, offered for sale, introduced, delivered or imported for introduction into commerce into California are required to certify these evaporative emissions control system components and obtain an Executive Order (EO) from CARB. The engines must meet the evaporative emission standards or performance or design standards, the SIMW must be registered, not be modified with an aftermarket part unless approved, be labelled, contain warranty statements and meet defect warranty requirements, be properly reported and comply with compliance testing. (Cal. Code Regs., tit. 13, §§ 2850-2869.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to forty-two thousand, four hundred and fifty dollars (\$42,450.00) for each strict liability violation of the SIMW Evaporative Regulation, respectively, for each noncompliant SIMW. (Health & Saf. Code, § 43016, 43154; Cal. Code Regs., tit. 13, § 2850 et seq.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Boston Whaler, Inc. was organized under the laws of Delaware as Boston Whaler, Inc., located in Florida, and conducted business in the State of California.
- (6) Allegations. CARB alleges Boston Whaler, Inc. violated the SIMW Evaporative Regulation by manufacturing for sale, selling, offering for sale, introducing, importing, or delivering for introduction into commerce new SIMW into California, that failed to comply with the requirements of the SIMW Evaporative Regulation by failing to obtain an EO (Cal. Code Regs., tit. 13, § 2852, 2856); meet the evaporative emission standards (Cal. Code Regs., tit. 13, § 2854, 2855); register (Cal. Code Regs., tit. 13, § 2857); label (Cal. Code Regs., tit. 13, §§ 2859, 2860);

provide adequate warranty (Cal. Code Regs. tit. 13, § 2861, 2862); and conduct component compliance testing (Cal. Code Regs., tit. 13, §§ 2864, 2865). CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against Boston Whaler, Inc. for each and every vessel involved in the violations.

- (7) Acknowledgment. Boston Whaler, Inc. admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (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, Boston Whaler, Inc. 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 Boston Whaler, Inc. for the alleged violations referred to above in the Legal Background and Case Background, and Boston Whaler, Inc. agreement to complete all terms and conditions set forth below, CARB and Boston Whaler, Inc. agree as follows:

- (9) Settlement Amount. Boston Whaler, Inc. shall pay a civil penalty of nineteen thousand two hundred sixty dollars and thirty-six cents, (\$19,260.36 USD), and agrees to fund a Supplemental Environmental Project (SEP) entitled New Voices are Rising: Air Quality Week, located in Bay View Hunters Point, East/West Oakland, and Contra Costa County, in the amount of ten thousand seven hundred thirty-nine dollars and sixty-four cents, (\$10,739.64 USD), consistent with CARB's SEP Policy, for a total settlement of thirty thousand dollars, (\$30,000.00 USD). Boston Whaler, Inc. shall make all payments within 30 calendar days from the date CARB notifies Boston Whaler, Inc. of the full execution of the Settlement Agreement.
- (10) Notification Date. The date upon which CARB notifies Boston Whaler, Inc. according to Paragraph 16 (Notices), that the Settlement Agreement is fully executed or when CARB sends the fully executed Settlement Agreement to Boston Whaler, Inc.
- (11) Civil Penalty Payment Method. Boston Whaler, Inc. shall pay the civil penalty by check, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Boston Whaler, Inc. 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 Boston Whaler, Inc. in accordance with Paragraph 16 (Notices).

- (12) SEP Payment Method(s). Boston Whaler, Inc. shall fund the SEP by check, payable to the SEP Administrator/Recipient, New Voices are Rising: Air Quality Week in Bay View Hunters Point, East/West Oakland, and Contra Costa County, using instructions provided separately by CARB in a SEP Payment Transmittal Form. Boston Whaler, Inc. is responsible for all payment processing fees. Payments shall be accompanied by the SEP Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to Boston Whaler, Inc. in accordance with Paragraph 16 (Notices).
- (13) Prohibition Against Financial Benefit. Boston Whaler, Inc has agreed that by funding the SEP entitled New Voices are Rising: Air Quality Week, Boston Whaler, Inc. will not receive any direct or indirect financial benefit, and that whenever Boston Whaler, Inc publicizes or refers to the SEP or the results of the SEP, Boston Whaler, Inc. 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 Administrator/Recipient 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 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, Boston Whaler, Inc. assigns any and all rights against the SEP Administrator/Recipient to CARB.
- (15) Documents. Boston Whaler, Inc. shall promptly email or mail the signed and dated Settlement Agreement to the address or email in Paragraph 16 (Notices).
- (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
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to Boston Whaler, Inc.:

Lenn Scholz
President of Boston Whaler Group
Boston Whaler, Inc.
100 Whaler Way
Edgewater, Florida 32141

As to Boston Whaler, Inc's Consultant:

John Dunlap
President, Dunlap Group
690 Market Street, Unit 202
San Francisco, California 94104
john@dunlapgrp.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, Boston Whaler, Inc. shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (18) Repeat Violations. Boston Whaler, Inc. 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 8 pages and 38 numbered paragraphs.
- (20) Binding Effect. This Settlement Agreement binds Boston Whaler, Inc., 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 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.
- (26) Not Tax Deductible. For purposes of this Settlement Agreement, Boston Whaler, Inc. shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
- (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 the full completion of civil penalty, mitigation and all other undertakings above, CARB hereby releases Boston Whaler, Inc. 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 or per vehicle penalty in this case is a maximum of forty-two thousand four hundred fifty dollars (\$42,450.00 USD) per action under Health and Safety Code sections 43016 and 43154, for violations of the SIMW Evaporative Regulation (Cal. Code Regs., tit. 13, §§ 2850 et seq.). The penalty of thirty thousand dollars (\$30,000.00 USD) over an unspecified number of days of violation is for twenty (20) noncompliant SIMW. The per unit penalty in this case is approximately one thousand five hundred dollars (\$1,500.00 USD) per noncompliant unit.
- (35) Emissions. The provisions cited above do prohibit emissions above a specified level. Without information on usage and emission rates, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the SIMW did not meet the regulatory requirements, all emissions were excess and illegal.
- (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 based this penalty in part on confidential business information provided by Boston Whaler, Inc. and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.
- (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 Boston Whaler, Inc. 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 Boston Whaler, Inc. with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Boston Whaler, Inc. 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, Boston Whaler, Inc. 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 Boston Whaler, Inc. 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 Boston Whaler, Inc. 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. Boston Whaler, Inc. is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Boston Whaler, Inc. 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 Boston Whaler, Inc. 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: Heather L. Quiros

Title: Chief, Enforcement Division

Date: May 17, 2024

Boston Whaler, Inc.

Signature: /S/

Name: Lenn Scholz

Title: President, Boston Whaler Group

Date: April 15, 2024