

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 Midwest Can Company, LLC (MDC), with its principal location at 10800 West Belmont Avenue, Franklin Park, Illinois 60131 (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 containers or spouts or components, for use in California must certify these containers, spouts, or components for use and sale, obtain an executive order, and properly label the 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 thirty-two dollars (\$632.00 USD) for each strict liability violation of the Portable Fuel Container Regulation, respectively, for each noncompliant portable fuel container, spout or component. (Cal. Code Regs., tit. 13, § 2467-2467.9; Health & Saf. Code § 43016.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, MDC was organized under the laws of Delaware as a limited liability company and conducted business in the State of California.
- (6) Allegations. CARB alleges that MDC violated the Portable Fuel Container Regulation by selling, supplying, offering for sale, advertising or manufacturing for sale in California portable fuel container systems for use in California, and

failing to comply with the certification requirements, resulting in the violations, as outlined in Notice of Violation EPES-2024-C00787. CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against MDC for each and every portable fuel container system involved in the violations and each day.

- (7) Acknowledgment. MDC 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, MDC 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 MDC for the alleged violations referred to above in the Legal Background and Case Background, and MDC's agreement to complete all terms and conditions set forth below, CARB and MDC agree as follows:

- (9) Settlement Amount. MDC shall pay a civil penalty of one hundred forty-seven thousand five hundred dollars (\$147,500.00 USD) and agrees to fund a Supplemental Environmental Project (SEP) entitled *The Bowl at Kenneth Hahn Revitalization: Implementation Phase I*, in the amount of one hundred forty-seven thousand five hundred dollars (\$147,500.00 USD), consistent with CARB's SEP Policy, for a total settlement of two hundred ninety-five thousand dollars (\$295,000.00 USD). MDC shall make all payments within thirty (30) calendar days from the Notification Date.
- (10) Notification Date. The date upon which CARB notifies MDC according to Paragraph 16 (Notices), that the Settlement Agreement is fully executed or when CARB sends the fully executed Settlement Agreement to MDC.
- (11) Civil Penalty Payment Method. MDC 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. MDC 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 MDC in accordance with Paragraph 16 (Notices).

- (12) SEP Payment Method. MDC shall fund the SEP by check, payable to the SEP Recipient/Administrator, *Tree People*, using instructions provided separately by CARB in a SEP Payment Transmittal Form. MDC 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 MDC in accordance with Paragraph 16 (Notices).
- (13) Prohibition Against Financial Benefit. MDC has agreed that by funding the SEP entitled, *The Bowl at Kenneth Hahn Revitalization: Implementation Phase I*, MDC will not receive any direct or indirect financial benefit, and that whenever MDC publicizes or refers to the SEP or the results of the SEP, MDC 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 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, MDC assigns any and all rights against the SEP Recipient/Administrator to CARB.
- (15) Documents. MDC 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 / Engine and
Parts Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to MDC:

Midwest Can Company, LLC
10800 West Belmont Avenue
Franklin Park, Illinois 60131
Pat.Haggerty@midwestcan.com

As to MDC's Legal Representation:

Michael Major
Powerful Compliance, LLC
1763 Shasta Place
Vail, Colorado 81657
MMajor@powerfulcompliance.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, MDC shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (18) Repeat Violations. MDC 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 numbered paragraphs.
- (20) Binding Effect. This Settlement Agreement binds MDC, 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) 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 payment, and all other undertakings above, CARB hereby releases MDC and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations from any allegations or findings of non-compliance based on the test results described in Notice of Violation EPES-2024-C00787.
- (32) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (33) Per Unit Penalty. The per unit penalty in this case is a maximum of six hundred thirty-two dollars (\$632.00 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 \$295,000 is for 51,176 noncompliant portable fuel container systems. The per unit penalty in this case is approximately \$5.76 per noncompliant unit.
- (34) Emissions. The provisions cited in Paragraph 6 (Allegations) 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 portable fuel containers systems did not meet the regulatory requirements, all of the emissions from them were alleged by CARB to be excess and illegal.
- (35) 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. Mitigating Factors in this case include, but are not limited to, the following specific examples, one or more of which may apply to each specific issue:

- a) MDC fully cooperated with the investigation;
- b) MDC had an Executive Order for the subject units;
- c) MDC has taken specific action to prevent the recurrence of the alleged violations by implementing internal processes and procedures;
- d) The duration of violation was a short period during the COVID-19 pandemic.

(36) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by MDC 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 violations alleged in this Settlement Agreement.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against MDC 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 MDC with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by MDC 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, MDC 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 MDC 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 MDC, 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. MDC is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; MDC'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 MDC'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: Shannon M. Dilley

Title: Chief Counsel

Date: June 2, 2025

Midwest Can Company, LLC

Signature: /S/

Name: Jerry W. Burris

Title: President and Chief Executive Officer

Date: May 8, 2025