SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the California Air Resources Board (ARB), with its principal office at 1001 I Street, Sacramento, California, and Bombardier Recreational Products (BRP) with its principal place of business at 726 Saint-Joseph Street, Valcourt, Quebec, Canada.

RECITALS

1. ARB alleges that from April 2014 to February 2015, BRP sold, supplied, and offered for sale in California quantities of "XPS Anti-Corrosive Lubricant" subject to the Toxic Air Contaminant (TAC) limit for Multi-Purpose Lubricant category, title 17, California Code of Regulations (CCR), section 94509(a).

2. ARB alleges that the XPS Anti-Corrosive Lubricant product contained Perchloroethylene which was prohibited for use in Multi-Purpose Lubricants on December 31, 2010 as specified in title 17, CCR, section 94509(m)(1).

3. ARB alleges that if the allegations described in recital paragraphs 1 and 2 were proven, civil penalties could be imposed against BRP as provided in Health and Safety Code sections 42402, et seq. for each and every unit involved in the violations.

4. BRP admits the allegations described in recital paragraphs 1 and 2, but denies any liability resulting from said allegations.

5. The parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

Therefore, the parties agree as follows:

TERMS AND CONDITIONS

1. BRP shall not sell, supply or offer for sale for use in California any consumer products in violation of ARB consumer products regulations set forth in title 17, CCR, Section 94500 et seq. however, the terms and conditions set forth in this agreement will remain valid and enforceable notwithstanding any future violations that may occur.

2. BRP in settlement of the above-described violation of title17, CCR, section 94509(a) agrees to pay a penalty to the ARB in the amount of $6,500.00 to the California Air Pollution Control Fund.

3. This settlement shall apply to and be binding upon BRP and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency

that may have responsibility for and jurisdiction over the subject matter of this settlement.

4. The parties stipulate that this Agreement shall be the final resolution of ARB claims regarding the above-described violations and shall have the same res judicata effect as a judgment in terms of acting as bar to any civil action by ARB against BRP, its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations. This Agreement shall be deemed the recovery of civil penalties for purposes of precluding subsequent criminal action as provided in Health and Safety Code section 42400.7(a).

5. 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.

6. This Agreement constitutes the entire agreement and understanding between ARB and BRP 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 the ARB and BRP concerning these claims.

7. 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.

8. Each of the undersigned represents and warrants that he or she has full power and authority to enter into this Agreement.

9. **SB 1402 Statement.** California Health and Safety Code (HSC) section 39619.7 (Senate Bill 1402 - Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks. This Settlement Agreement includes this information, which is also summarized here.

   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 is this case is HSC section 42402, et seq. because BRP sold, supplied, offered for sale, or manufactured for sale consumer products for commerce in California in violation of the Consumer Products Regulations (Title 17 California Code of Regulations (CCR) section 94507, et seq.). The penalty provisions of HSC section 42402, et seq. apply to violations of the Consumer Products Regulations because the regulations were adopted under authority of HSC section 41712 which is in Part 4 of Division 26 of the Health and Safety Code. The penalty provisions of HSC section 42402, et seq. apply to requirements adopted pursuant to Part 4.

The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit or per vehicle basis for the penalty.

Penalties must be set at levels sufficient to discourage violations. ARB considered all relevant circumstances in determining penalties, including the eight factors specified in HSC section 42403.

The per-unit penalty in this case is a maximum of $1,000 per day per strict liability violation or $25,000 per day per negligent violation. ARB has in other similar cases sought and obtained further penalties for procedural violations and for investigative costs. In this case the total penalty is $6,500.00.

The penalty in this case was reduced because BRP made diligent efforts to comply, and cooperated with the investigation. Penalties in future cases might be smaller or larger on a per ton basis.

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 the excess emissions, if it is practicable to do so.

The Consumer Product Regulations do not prohibit emissions above a specific level, but they do limit the concentration of VOCs in regulated products. In this case a quantification of the excess emissions attributable to the violations was practicable because of ARB's lab results and BRP made the product sales data necessary to make this quantification available to the ARB. Based upon this information (which BRP has designated as confidential), the violations were calculated to have caused 166 pounds of excess emissions of volatile organic chemicals to be emitted to the atmosphere in California.

10. BRP acknowledges that ARB has complied with SB1402 in investigating and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty amount is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

11. Final penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar negotiated cases, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days resulting in quantifiable harm to the environment considered together with the

complete circumstances of this case listed above. Penalties in future cases might be smaller or larger on a per ton basis.

12. The final penalty in this case was based in part on confidential business information provided by BRP that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and BRP that ARB does not retain in the ordinary course of business. The penalty reflects ARB's assessment of the relative strength of its case against BRP, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that BRP may have secured from its actions.

CALIFORNIA AIR RESOURCES BOARD

Dated: 7/18/16

By: _____
Dr. Todd P. Sax, Chief
Enforcement Division

BOMBARDIER RECREATIONAL PRODUCTS

Dated: 2016-05-10

By: Jean Daunais
Jean Daunais, Director Product Compliance