SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "Agreement") is entered into by and between the State of California Air Resources Board (hereinafter "ARB") with its principal office at 1001 "I" Street, Sacramento, California, and Midwest Can Company, with its principal place of business at 10800 West Belmont Avenue, Franklin Park, Illinois 60131.

RECITALS

1. California Code of Regulations, title 13, section 2467(b) provides, "...no person shall sell, supply, offer for sale, advertise, or manufacture for sale in California a portable fuel container or spout or both portable fuel container and spout on or after July 1, 2007 unless said portable fuel container or spout or both portable fuel container and spout is covered by an Executive Order issued pursuant to this article."

2. California Code of Regulations, title 13, section 2467.2(b) provides in relevant part, "...no person shall sell, supply, offer for sale, or manufacture for sale in California any spout which, at the time of sale or manufacture, does not meet all of the following Performance Standards for Spill-Proof Spouts:... (2) Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel..."

3. California Code of Regulations, title 13, section 2467.1(a)(22) defines "Target Fuel Tank" as "any receptacle that receives fuel from a portable fuel container."

4. California Code of Regulations, title 13, section 2467.2(c) provides, "Except as provided in Section 2467.3, every portable fuel container, spout, or portable fuel container and spout produced on or after July 1, 2007 that is manufactured for sale, advertised for sale, sold, or offered for sale in California or that is introduced, delivered or imported into California for introduction into commerce and that is subject to any of the standards prescribed in this article and documents incorporated by reference therein, must be certified for use and sale by the manufacturer through the Air Resources Board and covered by an Executive Order issued pursuant to Section 2467.2(d)."

5. California Code of Regulations, title 13, section 2467.2(d) provides, "The criteria for obtaining certification, including all test procedures for determining certification and compliance with the standards applicable to portable fuel containers, spouts, or portable fuel containers and spouts produced on or after

July 1, 2007 that are manufactured for sale, advertised for sale, sold, or offered for sale in California, or that are introduced, delivered or imported into California for introduction into commerce and that are subject to any of the standards prescribed in this article and documents incorporated by reference therein are set forth in 'CP-501, Certification Procedure for Portable Fuel Containers and Spill-Proof Spouts,' adopted July 26, 2006, which is incorporated by reference herein."

6. California Code of Regulations, title 13, section 2467.7(a) provides, "Testing to determine compliance with Section 2467.2(b) of this article shall be performed by using the following test procedures:(1) 'Test Method 510, Automatic Shut-Off Test Procedure For Spill-Proof Systems And Spill-Proof Spouts,'" adopted July 6, 2000, (section numbers corrected September 13, 2000), as amended July 26, 2006, which is incorporated by reference herein.(2) 'Test Method 511, Automatic Closure Test Procedure For Spill-Proof Systems And Spill-Proof Spouts,' adopted July 6, 2000, (section numbers corrected September 13, 2000), which is incorporated by reference herein."

7. CP-501, paragraph 2.4 provides, "Portable fuel containers, spouts, or both portable fuel containers and spouts must comply with the specifications for durability in Air Resources Board Test Procedure TP-501, Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems July 26, 2006, and Air Resources Board Test Procedure TP-502, Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers July 26, 2006, for containers and spouts, which are incorporated by reference herein." TP-502, paragraph 7.5 specifies the fully opening and closing of the PFC spout without dispensing fuel. The spout must return to the closed position without the aid of the operator.

8. CP-501, paragraph 2.5 provides, "There shall be no fluid leakage from any point in the spill-proof system or spill-proof spout as specified in Air Resources Board Test Procedure TP-501, Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems July 26, 2006, and Air Resources Board Test Procedure TP-502, Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers July 26, 2006, which are incorporated by reference herein." TP-502, paragraph 7.4, specifies "Any fuel leaking from any part of the container will denote a leak..." TP-502, paragraph 7.3 specifies "For containers with leaks that cannot be repaired without the use of tools, sealant, etc., those containers and spouts shall be removed from testing and the failure documented on the data sheet."

9. CP-501, paragraph 2.3, subparagraph b) provides, "Portable fuel containers produced on or after January 1, 2009 that are equipped with an intended spill-proof spout must emit no more than 0.3 grams per gallon per day as determined by Air Resources Board Test Procedure TP-502 Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers July 26, 2006, which is incorporated by reference herein." TP-502 specifies the calculation of the diurnal rate using the highest recorded daily weight loss observed during the three diurnal cycles.

10. California Code of Regulations, title 13, section 2467.9(a) provides, "If the Executive Officer finds any manufacturer, distributor, or retailer manufacturing for sale, advertising for sale, selling, or offering for sale in the State of California a portable fuel container or spout or both portable fuel container and spout that does not comply with the requirements set forth in this article, he or she may enjoin said manufacturer, distributor, or retailer from any further manufacture, advertisement, sales, offers for sale, or distribution of such noncompliant portable fuel containers or spouts or both portable fuel containers and spouts, in the State of California pursuant to Section 43017 of the Health and Safety Code. The Executive Officer may also assess penalties to the extent permissible under Part 5, Division 26 of the Health and Safety Code and/or revoke any Executive Order(s) issued for the noncompliant portable fuel container, spout or both portable fuel container and spout."

11. On or about September 28, 2008, Midwest Can Company submitted an application for certification of its PFC model numbers 6600, 5600, 5800, 2300, 1200, 8600, and 7600, each with a model number 4230 spout.

12. On or about December 15, 2008, ARB issued Executive Order G-08-045 to Midwest Can Company, which provides, "Production systems shall be in all material respects the same as those for which certification is granted and shall meet all the certification requirements except for the optional consumer acceptance program." The Executive Order also provides, "IT IS FURTHER ORDERED that any alteration of the components or design of the PFC certified hereby is prohibited and is inconsistent with this certification, unless said alteration has been approved by the Executive Officer or his designee." The Executive Order also provides, "IT IS FURTHER ORDERED that the Executive Officer may enjoin sales, assess penalties, or revoke or modify this certification as provided in CCR section 2467.9 if the Executive Officer determines that the product available for sale in California does not meet the certification requirements when tested in accordance with the 'Certification and Compliance Test Procedures' as provided in CCR section 2467.9."

13. In September 13, 2013, ARB obtained commercially available portable fuel containers (PFC) and spouts manufactured by Midwest Can Company.

14. ARB performed durability testing pursuant to the above test procedures and determined that one spout failed the durability standard due to its disintegration during actuation testing.

15. ARB performed leakage testing pursuant to the above test procedures and determined that three PFCs with spouts failed the leakage standard due to leaks from the spout during inversion testing.

16. ARB performed diurnal emissions testing and determined that the two remaining PFCs with spouts had a maximum diurnal emission rate of 0.4 grams per gallon per day, which exceeds the standard of 0.3 grams per gallon per day.

17. Between February 1, 2013 and January 21, 2016, Midwest Can Company sold, supplied, offered for sale, advertised, and/or manufactured for sale in California at least 108,900 portable fuel container systems with model 4230 spouts which, were stamped with dates of manufacture of February 1, 2013 - January 21, 2016 ("Subject Units").

18. ARB alleges that Midwest Can Company's actions described in recital paragraphs 1-17 were unlawful and in violation of the Portable Fuel Containers and Spouts requirements of title 13, California Code of Regulations, section 2467 et seq.

19. ARB further alleges that if the facts described in recital paragraphs 1-18 hereinabove were proven, civil penalties could be imposed against Midwest Can Company pursuant to Health and Safety Code section 43016 for each and every portable fuel container involved in said violations.

20. Midwest Can Company admits the facts in recital paragraphs 1-18, but denies any liability arising thereunder.

21. Midwest Can Company promptly and fully cooperated with ARB throughout its investigation.

22. Midwest Can Company has no prior enforcement record with ARB.

23. Midwest Can Company is willing to enter into this Agreement solely for the

purpose of the settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

24. NOW THEREFORE, in settlement of any and all claims that the ARB has against Midwest Can Company arising from the sale, supply, offer for sale, advertisement or manufacture for sale in California of the above-described Subject Units allegedly in violation of Title 13, California Code of Regulations section 2467.7, ARB and Midwest Can Company agree as follows:

TERMS AND RELEASE

In consideration of the ARB not filing a legal action against Midwest Can Company for the alleged violations referred to above, as well as the other terms set out below, ARB and Midwest Can Company agree as follows:

25. As a condition of this Agreement, Midwest Can Company shall pay the total sum of four hundred thousand dollars ($400,000.00) subject to the following terms: three hundred thousand dollars ($300,000.00) shall be paid as a penalty by certified check payable to the **California Air Pollution Control Fund** within five days of notice to Midwest Can Company that this Agreement has been executed by ARB. In addition, one hundred thousand dollars ($100,000.00) shall concurrently be paid by certified check payable to the **San Joaquin Valley Air Pollution Control District** and "For School Bus and Diesel Emission Reduction SEP" shall be annotated in the Note or Memo line of the check. All payments shall be mailed to the following address along with the attached Settlement Agreement Payment Transmittal Form.

    Please submit the payment along with the attached "Settlement Agreement Payment Transmission Form" (Attachment A) to:

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

26. This Agreement shall apply to and be binding upon Midwest Can Company and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors

and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

27. Now, therefore in consideration of the payment pursuant to paragraph 1 above, ARB releases Midwest Can Company and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, distributors, dealers and customers from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs 1-20 above.

28. ARB and Midwest Can Company stipulate that this Agreement shall be the final resolution by ARB of any claims it has against Midwest Can Company and its distributors, dealers, and customers, based on or arising from the events described in recital paragraphs 1-18 hereinabove with respect to the Subject Units, and that this Agreement shall bar further or future litigation of these claims by ARB against Midwest Can Company and its current and former (a) officers, (b) employees, (c) parents, (d) subsidiaries, (e) affiliated companies, (f) shareholders and owners, and (g) successors and assigns. ARB covenants not to sue or prosecute such parties with respect to such claims.

29. 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.

30. This Agreement constitutes the entire agreement and understanding between ARB and Midwest Can Company concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between ARB and Midwest Can Company concerning these claims.

31. 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 hereto.

32. Advice of Counsel. 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.

33. Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, 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.

34. 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.

35. Waiver, 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 constituted a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.

36. 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.

37. **SB1402 Statement**. Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires ARB to provide information on the basis for the penalties it seeks. This information, which is provided throughout this settlement agreement, is summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty:

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43024. The per unit penalty in this case is a maximum of $500 per unit per strict liability violation. The penalty obtained in this case is approximately $3.67 per unit for 108,900 units. The penalty was reduced because Midwest Can Company is a first time violator, was fully cooperative with the investigation, and timely implemented measures to cease manufacture and distribution of the portable fuel containers and spouts and to notify retailers that the affected portable fuel containers and spouts should not be sold in California.

The provision of law under which 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 HSC section 43016 because Midwest Can Company is alleged to have manufactured and introduced portable fuel containers or spouts, or both portable fuel containers and spouts into commerce in California after July 1, 2007, in violation of title 13, California Code of Regulations section 2467 *et seq.*

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. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available. However, since the Subject Units did not meet the requirements, emissions attributable to them are illegal. In the interest of settlement and because of the time and expense involved, the parties elected not to do such testing.

38. Midwest Can Company acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty 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.

39. 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 cases, and the potential costs and risk associated with litigating these particular violations. The penalty was reduced in this matter based of the factors listed above. Penalties in future cases might be smaller or larger on a per unit basis.

40. The penalty in this case was based in part on confidential business information provided by Midwest Can Company that is not retained by ARB in the ordinary course of business. The penalty was also based on confidential settlement communications between ARB and Midwest Can Company that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms-length negotiation between ARB and Midwest Can Company and reflects ARB's assessment of the relative strength of its case against Midwest Can Company, the desire to avoid the uncertainty, burden and expense of litigation,

obtain swift compliance with the law and remove any unfair advantage that Midwest Can Company may have secured from its actions.

41. The undersigned represent that they are authorized to enter this Agreement.

CALIFORNIA AIR RESOURCES BOARD

Dated: 3/10/2016

By: _____
Richard W. Corey
Executive Officer

Midwest Can Company

Dated: 2/22/2016

By: John Trippi

Name: John Trippi

Title: President