

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "Agreement") is entered into between the State of California Air Resources Board (hereinafter "CARB"), with its principal office at 1001 "I" Street, Sacramento, California, and Kawasaki Motors Corp., U.S.A., (hereinafter "KAWASAKI") with its principal place of business at 5080 36<sup>th</sup> Street S.E., Grand Rapids, Michigan.

### RECITALS

1. California Code of Regulations, title 13, section 2400, subdivision (a)(2) provides "Every new small off-road engine that is manufactured 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 must be covered by an Executive Order, issued pursuant to this article."
2. California Code of Regulations, title 13, section 2752 provides, "'Evaporative Model Emission Limit (EMEL)' means the diurnal emission rate declared by the manufacturer for a model within an evaporative family. The declared rate must be based on diurnal emissions test results for the model of engine or equipment within the evaporative family that is expected to exhibit the highest diurnal emission rate relative to the applicable diurnal emission standard, obtained by following TP-902."
3. California Code of Regulations, title 13, section 2753, subdivision (a) provides in pertinent part, "Small off-road engines or equipment that use small off-road engines subject to this Article must contain evaporative emission control systems. The evaporative emission control systems must be certified annually to the evaporative emission standards set out in sections 2754 through 2757 of this Article by the Air Resources Board."
4. California Code of Regulations, title 13, section 2754.1, subdivision (b)(5) provides in pertinent part, "A Holder shall certify an evaporative family to an EMEL..."
5. California Code of Regulations, title 13, section 2765, subdivision (a)(8) provides, "An evaporative family will be deemed to have passed the compliance testing if the diurnal emissions from all tested engines or equipment units are below the applicable diurnal emission standard in section 2754 or 2757, or the EMEL, if applicable. If any engine or equipment unit has diurnal emissions above the applicable diurnal emission standard in section 2754 or 2757, or the EMEL, if applicable, the evaporative family will be deemed to have failed compliance testing."
6. California Code of Regulations, title 13, section 2772 provides, in pertinent part, "the Executive Officer may seek civil or criminal penalties as provided for by law and/or such equitable relief deemed appropriate by the Executive Officer for any violation of these regulations."

7. Health and Safety Code section 43016 states, in pertinent part, “Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed five hundred dollars (\$500) per vehicle, portable fuel container, spout, engine, or other unit subject to regulation under this part, as these terms are defined in this division or state board regulations.”
8. On or about July 24, 2017, KAWASAKI purchased five lawnmowers equipped with KAWASAKI engines and evaporative emission control systems (Evaporative Family OCHKAXS17901 under Executive Order U-U-004-0691) from a retailer and supplied the units to CARB for compliance testing.
9. Executive Order U-U-004-0691 provides, “Production equipment shall be in all material respects the same as those for which certification is granted.”
10. CARB performed compliance testing of those five lawnmowers using CARB Test Procedure TP-902, except the durability demonstration in section 2.1 was omitted.
11. CARB’s compliance test results appear in Table 1, below.

ENGINE NUMBER	Before Preconditioning		After Preconditioning		EMEL (g/day)
	Hot Soak (g)	Diurnal Result (g/day)	Hot Soak (g)	Diurnal Result (g/day)	
1	0.087	0.495	0.111	0.801	0.6
2	0.137	0.467	0.116	0.850	
3	0.118	0.496	0.114	0.778	
4	0.094	0.481	0.099	0.720	
5	0.122	0.470	0.099	0.699	
U-Factor = 0.846 ( $\leq 0.66$ passing)					

12. The EMEL declared by KAWASAKI for Evaporative Family OCHKAXS17901 is 0.6 grams hydrocarbon per day (g/day). With a U-Factor of 0.846, the diurnal result after preconditioning must not exceed 0.66 g/day.
13. The Evaporative Family emissions compliance is determined based on the upper 95 percent confidence limit of the five highest diurnal test results, or “U-Factor.” Because the OCHKAXS17901 Evaporative Family was in production for more than three years at the time of compliance testing, the calculated U-Factor must exceed the applicable CARB emission standard by 10 percent or greater for the evaporative family to be considered non-compliant. The U-Factor calculated for the OCHKAXS17901 Evaporative Family was 0.846 g/day, which exceeds the manufacturer declared EMEL

by more than 40 percent. As a result, the OCHKAXS17901 Evaporative Family is non-compliant with the emission standards.

14. Because Evaporative Family OCHKAXS17902 relies on carry-across data from Evaporative Family OCHKAXS17901 for certification purposes, Evaporative Family OCHKAXS17902 is also non-compliant with the emission standards.
15. KAWASAKI surveyed its customers of these engines and determined that a total of 721 engines with Evaporative Family OCHKAXS17901 and Evaporative family OCHKASX17902 were sold in California between 2012 and 2017, inclusive ("subject engines").
16. CARB alleges that the sale, offer for sale in California, or introduction, delivery or importation into California for introduction into commerce sale, supply, offer for sale, advertisement, and/or manufacture for sale in California of the subject engines were unlawful and in violation of California Code of Regulations, title 13, section 2400, subdivision (a)(2).
17. KAWASAKI subsequently submitted a running change to CARB to increase the EMEL from 0.60 to 1.0 g/day hydrocarbon.
18. No violations have occurred at the same facility within the past three years.
19. The violations did not (1) result in actual harm, or present an imminent or substantial endangerment to, human health or the environment, or (2) violate the specific terms of any judicial or administrative order, or consent agreement.
20. KAWASAKI promptly and fully cooperated with CARB in the investigation of this matter.
21. CARB alleges that if the facts described in recital paragraphs 1-15 were proven, civil penalties could be imposed against KAWASAKI as provided in Health and Safety Code section 43016.
22. KAWASAKI admits the facts as alleged in recital paragraphs 1-15, but denies any liability arising therefrom.
23. KAWASAKI is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with CARB. CARB 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.

### **TERMS AND RELEASE**

In consideration of CARB not filing a legal action against KAWASAKI for the violations alleged above, and in consideration of the other terms set out below, CARB and KAWASAKI agree as follows:

1. As a condition of this Settlement Agreement, KAWASAKI shall pay the total sum of one hundred eighty thousand two hundred and fifty dollars (\$180,250), with ninety thousand one hundred twenty-five dollars (\$90,125) going to the California Air Pollution Control Fund and the other ninety thousand one hundred twenty-five dollars (\$90,125) going to a Supplemental Environmental Project (SEP) as detailed below. Payment will be made within thirty (30) days of executing this Settlement Agreement. Payment shall be made (with the Payment Transmittal Form attached as "ATTACHMENT A") by certified check in the amount of ninety thousand one hundred twenty-five dollars (\$90,125) payable to the **California Air Pollution Control Fund** and addressed to:

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

2. As a further condition of this Agreement, KAWASAKI has agreed to undertake a Supplemental Environmental Project (ATTACHMENT B), which CARB has approved as mitigation for alleged past violations. Pursuant to this Agreement, KAWASAKI shall, within thirty days of the Effective Date:
  - a. Send a check in the amount of ninety thousand one hundred twenty-five dollars (\$90,125) payable to **Tree Fresno** with the annotation "**Fresno Trees**" in the check's note or memo line to:

Tree Fresno  
ATTN: Lee Ayres  
3150 E. Barstow Ave.  
Fresno, California 93740

- b. Send a copy of the payment check and Payment Transmittal Form (ATTACHMENT A) to CARB's Accounting Office listed above.
3. KAWASAKI has agreed that by funding **Fresno Trees** SEP they will not receive any direct or indirect benefit, and that whenever it publicizes the SEPs or the results of the SEPs, it will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action.
4. Upon agreeing to the terms set forth in the SEP Agreements, funding the **Fresno Trees** SEP, KAWASAKI is released of all liabilities as they relate to the **Fresno Trees** SEP as reflected in this underlying Settlement Agreement.
5. In the event the SEPs are not fully implemented in accordance with the terms of the SEP Agreements, CARB (as the third party beneficiary) shall be entitled to recover the full amount of the SEPs from the SEP implementers, less any amount expended based on the timely and successful completion of any previously agreed upon interim

milestone(s), to be deposited into the California Air Pollution Control Fund. Accordingly, KAWASAKI shall assign any and all rights against the SEP implementers to CARB.

6. KAWASAKI has further agreed to surrender 985.8 evaporative emission credits gained from other engine families to offset the excess emissions pursuant to California Code of Regulations, title 13, section 2765, subdivision (b).
7. Effect of Untimely Payment. If the penalty or SEP payment described in the Terms and Release paragraphs 1-2, respectively, is more than fifteen (15) days late, the entire remaining balance shall become immediately due and payable without notice or demand.
8. If the Attorney General files a civil action to enforce this settlement agreement, KAWASAKI shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
9. This Agreement shall apply to and be binding upon KAWASAKI and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
10. Now, therefore, in consideration of the payment by KAWASAKI to the California Air Pollution Control Fund and Tree Fresno in the amounts specified above and the surrender of 985.8 evaporative emission credits, CARB hereby releases KAWASAKI and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from any and all claims that CARB may have based on the facts and allegations described in recital paragraphs 1-16, above. The undersigned represent that they have the authority to enter this Agreement.
11. This Agreement constitutes the entire agreement and understanding between CARB and KAWASAKI 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 CARB and KAWASAKI concerning these claims.
12. 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.
13. 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.

14. 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.
15. 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.
16. 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 constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.
17. 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.
18. This Agreement may be signed in counterparts, and its validity shall not be challenged on that basis. True and correct copies of signed counterparts shall be deemed effective as originals for all purposes.

#### **19. SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires the CARB to provide information on the basis for the penalties it seeks. This required 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 maximum per unit penalty in this case is \$500 per unit per strict liability violation. The penalty obtained in this case is \$250.00 per unit for 721 units. This reflects the facts that this was an unintentional, first time violation of this type; KAWASAKI promptly and fully cooperated with the investigation, and to correct the violations; there were no adverse environmental consequences because a running change to increase the EMEL for the subject engines was subsequently approved by CARB; and KAWASAKI is surrendering 985.8 evaporative credits.

#### **The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.**

CARB alleges that the penalty provision being applied in this case, Health and Safety Code section 43016, is appropriate because KAWASAKI sold, supplied, offered for sale, advertised, and/or manufactured for sale in California small off-road engines that did not meet the evaporative limits.

**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. KAWASAKI alleges that the subject units did not increase emissions, because a running change for the subject engines was subsequently approved by CARB.

20. KAWASAKI acknowledges that CARB has complied with SB 1402 in prosecuting and settling this case. Specifically, CARB has considered all relevant facts, including those listed at Health and Safety Code section 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), 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.
21. 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 case negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain period of time, considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.
22. The penalty in this case was based in part on confidential business information provided by KAWASAKI that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and KAWASAKI that CARB does not retain in the ordinary course of business either. The penalty also reflects CARB's assessment of the relative strength of its case against KAWASAKI, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that KAWASAKI may have secured from its alleged actions.

**California Air Resources Board**

By: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: Richard W. Corey

Title: Executive Officer

Date: 9/15/2019

**Kawasaki Motors Corp., U.S.A.**

By: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: Shinji Kamatani

Title: EVP, Finance and Treasurer /  
Chief Financial Officer

Date: 8/14/2019