

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB"), with its principal office at 1001 I Street, Sacramento, California 95814 and KALMAR USA, INC. (hereinafter "KALMAR") with its principal place of business at 415 East Dundee Street, Ottawa, Kansas 66067 (individually, "Party" and collectively, "Parties").

RECITALS

1. The California Health and Safety Code mandates the reduction of the emission of air pollution from off-road engines. (Health & Saf. Code §§ 43013; 43018).
2. CARB adopted the "*Off-Road Compression-Ignition Engines and Equipment Regulation*" (Cal. Code Regs. §§ 2420-2427) (Off-Road CI Regulation) in 1993 to reduce emissions of Oxides of Nitrogen (NO_x), Hydrocarbons (HC), Carbon Monoxide (CO) and Particulate Matter (PM) from these off-road engines.
3. California Code of Regulations, title 13, section 2420(a)(3) requires every new off-road compression-ignition engine that is manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into California, to be certified for use and be covered by an Executive Order (EO) from CARB.
4. Failure to comply with any requirement of the Off-Road CI Regulation is a violation of state law that may result in penalties up to five hundred dollars (\$500.00) for each illegal act prior to January 1, 2017, and possible further injunctive relief. (Health & Saf. Code, § 43016; Cal. Code Regs., tit.13, § 2420 et seq.)
5. In 2013, KALMAR sold, offered for sale, introduced or delivered for introduction into commerce, or imported into California, one model year 2011 (engine model TAD1360VE with engine serial number 2013299674) and one model year 2013 (engine model TAD1360VE with engine serial number 2013423495) off-road compression-ignition engines (Subject Engines) that were not certified by CARB.
6. KALMAR promptly and fully cooperated with CARB throughout its investigation.

7. CARB alleges that if the facts described in recital paragraphs 1 through 5 were proven, civil penalties, and other injunctive relief, could be imposed against KALMAR as provided in Health and Safety Code section 43016.
8. KALMAR admits the facts described in recital paragraphs 1 through 5, but denies any liability arising therefrom.
9. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve the claims, disputes, and obligations relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this Agreement, without the need for formal litigation. KALMAR has taken or agrees to take the actions enumerated below within the Terms and Release for the purpose of settlement and full resolution of any potential penalties or injunctive claims in this matter. CARB accepts this Agreement in termination of this matter.

TERMS AND RELEASE

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

1. KALMAR shall pay the total sum of one thousand dollars (\$1,000.00) as a penalty to the State of California Air Resources Board for deposit into the California Air Pollution Control Fund within thirty (30) days of the Effective Date.

Each check shall be accompanied with the "Settlement Agreement Payment Transmittal Form" and sent to:

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

Each wire transfer shall be accompanied with the "Settlement Agreement Payment Transmittal Form" and sent to:

State of California Air Resources Board
c/o Bank of America, Inter Branch to 148
Routing No. 0260-0959-3 Account No. 01482-80005
Notice of Transfer: Edna Murphy Fax: (916) 322-9612
Reference: CARB Case # EPES-2020-C00346

Wire Transfer Fee: Kalmar is responsible for any bank charges incurred for processing wire transfers.

2. KALMAR shall send the original signed Agreement, copies of payment and the Settlement Agreement Payment Transmittal Form, and any future mailings or documents required per the terms of this Agreement to:

Mr. Nathan Biasotti
California Air Resources Board
Enforcement Division
8340 Ferguson Ave
Sacramento, California 95828
Nathan.Biasotti@arb.ca.gov

3. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement.
4. If the Attorney General files a civil action to enforce this settlement agreement, KALMAR shall pay the costs of investigating and prosecuting the action.
5. KALMAR agrees that it shall comply with all requirements of the Off-Road CI Regulation, California Code of Regulations, title 13, section 2420 et seq.
6. This Agreement shall apply to and be binding upon KALMAR and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and predecessors and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
7. Now, therefore, in consideration of the payment by KALMAR to the State of California Air Resources Board in the amount specified above, CARB hereby releases KALMAR and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from all claims identified in paragraphs 1 through 5 of the Recitals.
8. The Effective Date of this Agreement shall be the date upon which it is fully executed.
9. This Agreement constitutes the entire agreement and understanding between CARB and KALMAR 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 KALMAR concerning these claims.

10. 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.
11. 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.
12. 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.
13. KALMAR agrees that this penalty imposed on KALMAR by CARB is nondischargeable under 11 U.S.C § 523 (a)(7).
14. 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.
15. 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.
16. The captions by which the sections and subsections of this Agreement are identified are for convenience only, and shall have no effect whatsoever upon their interpretation.
17. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.
18. 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.

19. Penalty Determination

Below is the basis for the assessed penalties (Health & Saf. Code § 39619.7.)

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 in this case is Health and Safety Code section 43016, because KALMAR allegedly sold, offered for sale, introduced or delivered for introduction into commerce, or imported into California the subject non-California certified new off-road compression-ignition engines that were not properly certified pursuant to California Code of Regulations, title 13, section 2420 et seq.

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

The penalties in this matter were determined in consideration of all relevant circumstances, including the eight statutory factors. (Health & Saf. Code § 42403.) The per unit penalty in this case is a maximum of \$500.00 per unit per strict liability violation. The penalty obtained in this case is \$500.00 per unit for two units.

Penalties were determined based on the unique circumstances of this matter, considered together with the need to set penalties at levels sufficient to deter violations, the need to remove any economic benefit from noncompliance, to obtain swift compliance, and considering past penalties in similar cases, 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.

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. There are no testing results available that would indicate how much emissions increased as a result of the use of the Subject Engines. However, since the Subject Engines were not legal for use in California, emissions attributable to them are illegal and excess as well. In the interests of settlement and because of the time

and expense involved, the Parties elected not to do such testing.

20. KALMAR acknowledges that CARB has complied with all provisions of Health and Safety Code section 39619.7, and considered the relevant factors in Health and Safety Code sections 42403 and 43024.
21. The penalty in this case was based in part on confidential business information provided by KALMAR 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 KALMAR 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 KALMAR, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that KALMAR may have secured from its alleged actions.
22. The undersigned represent that they have full power and authority to enter this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Kalmar USA, Inc.

By: _____ /S/ _____

By: _____ /S/ _____

Name: Todd P. Sax, D.Env.

Name: Regina Lopez

Title: Chief, Enforcement Division

Title: President, Kalmar USA, Inc.

Date: June 26, 2020

Date: June 16, 2020