

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 Graco Inc. and its subsidiaries (Graco), with its principal location at 88-11th Avenue Northeast, Minneapolis, Minnesota 55413, (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) **Purpose.** The California Health and Safety Code mandates the reduction of emission of air pollution from off-road engines. (Health & Saf. Code §§ 43013; 43018.)
- (2) **Regulation.** CARB adopted the "*Evaporative Emission Requirements for Off-Road Equipment*" Regulation (Cal. Code Regs., tit. 13, §§ 2750-2774) (Evaporative Emissions Regulation) to reduce emissions of oxides of nitrogen (NOx) and hydrocarbons (HC) from off-road spark-ignited small off-road engines (SORE) rated at equal to or less than 19 kilowatts, and equipment utilizing such engines.
- (3) **Regulatory Provisions.** The Evaporative Emissions Regulation requires all SORE engines that are manufactured for sale or lease for use or operation in California; sold, leased for use, or operation in California; or delivered or imported into California for introduction into commerce in California must be equipped with an evaporative emissions control system that is certified according to the certification requirements and procedures; meets the diurnal emission and design standards, fuel cap performance standards, and carbon canister size requirements, is properly tested following all required test procedures; is properly labeled; and meets all warranty requirements. (Cal. Code Regs., tit. 13, § 2750-2774.)
- (4) **Penalty Provisions.** Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to five hundred dollars (\$500) for each strict liability violation of the Evaporative Emissions Regulation, respectively, for each day in which the violation(s) occurs. (Cal. Code Regs., tit.13, § 2772; Health & Saf. Code § 43016.)

CASE BACKGROUND

- (5) **Corporate Entity.** At all relevant times, Graco was organized under the laws of Minnesota as an incorporated and conducted business in the State of California.
- (6) **Allegations.** This Settlement Agreement resolves all matters between CARB and Graco, which are documented in Notice of Violation (NOV) EPES-2020-C00332 which was issued on June 24, 2020. CARB alleges Graco violated the Evaporative Emissions Regulation by manufacturing for sale in California, selling, offering for sale

in California, or introducing, delivering or importing into California for introduction into commerce in California 8 SORE engines, for use in California that failed to comply with the requirements of the Evaporative Emissions Regulation by failing to obtain an Executive Order pursuant to the certification requirements and protocols (Cal. Code Regs., tit. 13, § 2753). Graco notes that the allegation of violation relates to Graco not obtaining an Executive Order pursuant to the certification requirements and protocols, and not that the engines necessarily violated underlying emission level regulations. This resulted in five violations being alleged by CARB, as outlined in Notice of Violation EPES-2020-C00332 and three additional violations being alleged by CARB after issuance of the Notice of Violation. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against Graco for each and every SORE engine involved in the violations of the Evaporative Emissions Regulations.

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

- (9) Settlement Amount. Graco shall pay a civil penalty of two thousand dollars (\$2,000.00 USD), Graco shall make all payments within 30 calendar days from the date CARB notifies Graco of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Graco shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Graco 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 Graco in accordance with Paragraph 12 (Notices).

- (11) Documents. Graco shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, mitigation, and/or SEP (if applicable), a copy of the Payment Transmittal Form(s) (if applicable), and the signed and dated Compliance Plan (if applicable) to the address or email in Paragraph 12 (Notices).
- (12) 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
VPCPEB/EPES
9480 Telstar Avenue, Suite 4
El Monte, California 91731
Settlement_Agreement@arb.ca.gov

As to Graco:
Eric Hesse
Graco Inc.
88 – 11th Avenue Northeast
Minneapolis, Minnesota 55413
[Eric M Hesse@graco.com](mailto:Eric_M_Hesse@graco.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.

- (13) Repeat Violations. Graco agrees to comply with all regulatory requirements specifically referenced above and acknowledges that repeat violations could result in increased penalties in the future. In making this settlement, Graco does not admit or acquiesce to any accusation, including of fault or wrongdoing and reserves the right to bring any defense in the future.
- (14) 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 [6] pages and [32] paragraphs.

- (15) Binding Effect. This Settlement Agreement binds Graco, 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.
- (16) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (17) 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.
- (18) 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.
- (19) 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.
- (20) 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.
- (21) Not Tax Deductible. For purposes of this Settlement Agreement, Graco shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
- (22) 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.
- (23) 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.

- (24) 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.
- (25) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (26) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (27) Release. In consideration of the full completion of civil penalty and all other undertakings above, CARB hereby forever releases Graco and its principals, officers, receivers, trustees, shareholders, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (28) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (29) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of five hundred dollars (\$500) per action under Health and Safety Code section 43016, for violations of the Evaporative Emissions Regulation. (Cal. Code Regs., tit.13, § 2772; Health & Saf. Code § 43016.) The penalty of \$2,000 over an unspecified number of days of violation is for eight noncompliant SORE engines due to engines not having proper certifications and labels. The per unit penalty in this case is approximately \$250 per noncompliant unit.
- (30) Emissions. The provisions cited 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 SORE engines, did not meet the regulatory requirements, CARB maintains that all of the emissions from it were technically excess and illegal even if the actual emission may not have been at an excessive level.

- (31) 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.
- (32) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Graco and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Date: 10/12/2020

Graco Inc.

Signature: /S/

Name: Eric M. Hesse

Title: Engineering Services Manager

Date: 10/8/2020