

## 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 Kawasaki Motors Corp., U.S.A., (hereinafter "KAWASAKI") with its principal place of business at 5080 36th Street S.E., Grand Rapids, Michigan 49512 (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 "*Small Off-Road Engines*" Regulation (Cal. Code Regs., tit. 13, §§ 2400-2409) (SORE 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.
  - a) The SORE Regulation requires all SORE engines that are manufactured for sale, sold, or offered for sale in California, or introduced, delivered, or imported into California for introduction into commerce to be covered by an Executive Order showing the engine meets the exhaust emission standards as determined; was properly tested following all required test procedures; contains an emission control label; meets all defect warranty requirements; and compliance with the reporting requirements. (Cal. Code Regs., tit. 13, § 2400-2409.)
  - b) Cal. Code Regs., tit. 13, § 2403(g)(2)(A)(2) provides that all SOREs equal to or greater than 225 cc that are intended to replace an engine in a piece of off-road equipment that was originally produced with an engine manufactured prior to the applicable implementation date as described in section 2403(b), is not subject to the emissions requirements of section 2403(b) provided that, unless an alternative control mechanism is approved in advance by the Executive Officer, the engine manufacturer or its agent takes ownership and possession of the engine being replaced.
  - c) Cal. Code Regs., tit. 13, § 2403(g)(2)(A)3 provides that all SOREs equal to or greater than 225 cc that are intended to replace an engine in a piece of off-road equipment that was originally produced with an engine manufactured prior to the applicable implementation date as described in section 2403(b), is not subject to the emissions requirements of section 2403(b) provided that the replacement

engine is clearly and properly labeled.

- d) Cal. Code Regs., tit. 13, § 2403(g)(2)(B) requires, at the beginning of each model year, manufacturers of replacement engines to provide, by engine model, an estimate of the number of replacement engines it expects to produce for California for that model year.
  - e) Cal. Code Regs., tit. 13, § 2403(g)(2)(C) requires, at the conclusion of the model year, manufacturers of replacement engines to provide, by engine model, the actual number of replacement engines produced for California during the model year, and a description of the physical or performance characteristics of those models that indicate that certified replacement engine(s) were not available as per § 2403(g)(2).
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties of up to five hundred dollars (\$500) per unit. (Cal. Code Regs., tit.13, § 2407; Health & Saf. Code § 43016.)

#### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, KAWASAKI was organized under the laws of Delaware as a foreign for-profit corporation and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) C00238, which was issued on April 23, 2020. CARB alleges KAWASAKI violated the SORE 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 1,250 model years 2002, 2004-2006, and 2008-2018 SORE replacement engines in California that failed to comply with the requirements of the SORE Regulation by failing to take ownership and possession of those model year engines being replaced and properly label the replacement engines. In addition, KAWASAKI failed to submit 15 reports of estimates of the number of California replacement engines it expected to produce for model years 2002, 2004-2006, and 2008-2018 and failed to submit 15 reports of the actual number of engines produced at the end of those model years. This resulted in 1,280 violations. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against KAWASAKI for each and every SORE engine or report in violation of the SORE Regulations.
- (7) Acknowledgment. KAWASAKI admits to the allegations in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) Self-disclosure. KAWASAKI self-disclosed all of the violations in this matter and

fully and promptly cooperated to resolve this matter.

- (9) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to 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, KAWASAKI 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 KAWASAKI for the alleged violations referred to above in the Legal Background and Case Background, and KAWASAKI's agreement to complete all terms and conditions set forth below, CARB and KAWASAKI agree as follows:

- (10) Settlement Amount. KAWASAKI shall pay a civil penalty of eighty thousand dollars (\$80,000.00 USD) and fund a Supplemental Environmental Project entitled Installation of Air Filtration Systems in Stockton- Washington Elementary School (SEP) in the amount of eighty thousand dollars (\$80,000.00 USD), consistent with CARB's SEP Policy, for a total settlement of one hundred sixty thousand dollars (\$160,000.00 USD). KAWASAKI shall make all payments within 30 calendar days of the Effective Date.
- (11) Civil Penalty Payment Method. KAWASAKI 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. KAWASAKI is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to KAWASAKI in accordance with Paragraph 17 (Notices).
- (12) SEP Payment Method(s). KAWASAKI shall fund the SEP by wire transfer, credit card, or check, payable to the SEP implementer/recipient, Catholic Charities of the Diocese of Stockton Environmental Justice Program, using instructions provided separately by CARB in a Payment Transmittal Form. KAWASAKI is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to KAWASAKI in accordance with Paragraph 17 (Notices).
- (13) Prohibition Against Financial Benefit. KAWASAKI has agreed that by funding the SEP entitled Installation of Air Filtration Systems in Stockton- Washington

Elementary School, KAWASAKI will not receive any direct or indirect financial benefit, and that whenever KAWASAKI publicizes or refers to the SEP or the results of the SEP, KAWASAKI will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.

- (14) Assignment of Rights. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). Accordingly, KAWASAKI assigns any and all rights against the SEP implementer to CARB.
- (15) Compliance Plan. KAWASAKI shall promptly implement a compliance plan to ensure that KAWASAKI complies with all provisions of the laws and regulations outlined in the Legal Background.
- (16) Documents. KAWASAKI shall promptly email or mail the signed and dated Settlement Agreement, copy of proof of payment of the penalty and SEP, a copy of the Payment Transmittal Form to the address or email in Paragraph 17 (Notices).
- (17) 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  
Mobile Source Enforcement Branch / Engine and Parts Enforcement  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731  
Settlement\_Agreement@arb.ca.gov

As to KAWASAKI:

JJ Zeilstra  
Manager R&D  
Kawasaki Motors Corp., U.S.A.  
5080 36th Street S.E.  
Grand Rapids, Michigan 49512  
JJ.Zeilstra@kmc-usa.com

As to KAWASAKI's Legal Representation:

Michael A. Wiegard  
Eckert Seamans  
1717 Pennsylvania Ave. NW

12th Floor  
Washington, DC 20006  
mwiegard@eckertseamans.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 upon receipt via certified mail/return receipt requested.

- (18) Recovery of Costs. 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 attorneys' fees, and costs.
- (19) Repeat Violations. KAWASAKI agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (20) 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 eight (8) pages and thirty-eight (38) numbered paragraphs.
- (21) Binding Effect. This Settlement Agreement binds KAWASAKI, 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.
- (22) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (23) 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.
- (24) 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 to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.

- (25) 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.
- (26) 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.
- (27) Not Tax Deductible. For purposes of this Settlement Agreement, KAWASAKI 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.
- (28) 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.
- (29) 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.
- (30) 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.
- (31) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (32) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (33) Release. In consideration of the full payment of the civil penalty and SEP payment, and completion of all other undertakings above, CARB hereby releases

KAWASAKI and its principals, officers, employees, agents, receivers, trustees, 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.

- (34) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

### **PENALTY BASIS**

- (35) 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 SORE Regulation. (Cal. Code Regs., tit.13, § 2400 et seq.; Health & Saf. Code § 43016.) The penalty of one hundred sixty thousand dollars (\$160,000) over an unspecified number of days of violation is for 1,280 noncompliant replacement SORE engines and reports. The per unit penalty in this case is one hundred twenty-five dollars (\$125) per violation.

- (36) 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 and reports did not meet the regulatory requirements, all of the emissions from the engines were allegedly excess and illegal.

- (37) 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.

- (38) Confidential Business Information. CARB based this penalty in part on confidential business information provided by KAWASAKI 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: Richard W. Corey

Title: Executive Officer

Date:       8/24/2020      

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

Signature:       /S/      

Name:       Eigo Konya      

Title:       President & CEO      

Date:       6/30/2020