

## **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 Aebi & Co. AG Maschinenfabrik (Aebi), with its principal location at Buchmattstrasse 56, CH - 3401 Burgdorf, Switzerland, (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 "*Off-Road Compression-Ignition Engines and Equipment*" Regulation (Cal. Code Regs., tit. 13, §§ 2420-2427) (Off-Road CI Regulation) to reduce emissions of oxides of nitrogen (NOx) and hydrocarbons (HC) from these off-road engines.
- (3) Regulatory Provisions. Manufacturers of new off-road compression-ignition (CI) engines that are manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into California are required to certify these engines and obtain an Executive Order (EO) from CARB. The engines must meet the emission standards (either through a direct standard or through a family engine level or "FEL" under the averaging, banking, and trading or "ABT" program), and the manufacturer must also properly label, provide for defects investigation and reporting, and conduct production engine testing based on the model year (MY) and maximum engine power. Manufacturers may produce equipment and engines that are exempt from meeting current MY emission standards for a portion of their California-directed production volume using flexible allowances but must meet the notification, reporting, and labeling requirements. (Cal. Code Regs., tit. 13, §§ 2420-2427.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to thirty-seven thousand five hundred dollars (\$37,500.00) for each strict liability violation of the Off-Road CI Regulation, respectively, for each day in which the violation occurs. (Health & Saf. Code, § 43016; Cal. Code Regs., tit.13, § 2420 et seq.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, Aebi was organized under the laws of Switzerland and sold equipment containing new off-road compression ignition engines for import or delivery in the State of California.

- (6) **Allegations.** This Settlement Agreement resolves Notice of Violation (NOV) EPES-2020-C00376, which was issued on June 24, 2020. CARB alleges Aebi violated the Off-Road CI Regulation by manufacturing for sale, selling, offering for sale, introducing or delivering for introduction into commerce, or importing into California, new off-road compression-ignition engines that failed to comply with the requirements of the Off-Road CI Regulation resulting in ten violations, as outlined in NOV EPES-2020-C00376. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against Aebi for each and every vehicle involved in the violations and each day.
- (7) **Acknowledgment.** Aebi admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) **Self-Disclosure.** Aebi self-disclosed alleged violations in this matter and fully cooperated with CARB to resolve this matter.
- (9) **Consideration.** In consideration of the foregoing background, and of the promises 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 alleged violations, Aebi 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 Aebi for the alleged violations referred to above in the Legal Background and Case Background, and Aebi's agreement to complete all terms and conditions set forth below, CARB and Aebi agree as follows:

- (10) **Settlement Amount.** Aebi agrees to pay a civil penalty of thirty-five thousand one hundred fifty-six dollars (\$35,156.00 USD), and further agrees to fund a Supplemental Environmental Project entitled Skill Development Program for Rejuvenation of Urban Trees (SPROUT) (SEP) in the amount of thirty-five thousand one hundred fifty-six dollars (\$35,156.00 USD), consistent with CARB's SEP Policy, for a total settlement of seventy thousand three hundred twelve dollars (\$70,312.00 USD). Aebi shall make all payments within 30 calendar days from the date CARB notifies Aebi of the full execution of the Settlement Agreement.
- (11) **Civil Penalty Payment Method.** Aebi shall pay the civil penalty amount (\$35,156.00 USD) by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Aebi is

responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application of the moneys so paid. CARB shall deposit the civil penalty 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 Aebi in accordance with Paragraph 17 (Notices).

- (12) SEP Payment Method(s). Aebi shall fund the SEP by wire transfer payable to the SEP implementer/recipient, California Greenworks, Inc. using instructions provided separately by CARB in a Payment Transmittal Form. Aebi is responsible for all payment processing fees. The payment shall be accompanied by the Payment Transmittal Form to ensure proper application of the moneys so paid. Should payment instructions change, CARB will provide notice to Aebi in accordance with Paragraph 17 (Notices).
- (13) Prohibition Against Financial Benefit. Aebi has agreed that by funding the SEP entitled Skill Development Program for Rejuvenation of Urban Trees (SPROUT), Aebi will not receive any direct or indirect financial benefit, and that whenever Aebi publicizes or refers to the SEP or the results of the SEP, Aebi 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). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, Aebi assigns any and all rights against the SEP implementer to CARB, and CARB shall not obtain any additional rights against Aebi due to non-performance by the SEP implementer.
- (15) Other Relief. Within 30 calendar days from the date CARB notifies Aebi of the full execution of the Settlement Agreement, Aebi shall provide documentation showing that two Aebi Terratrak TT281s with serial numbers TAH43401EK1119006 and TAH43401EK1119008 have been removed from the state of California. Aebi will provide written notice of the removal of the two Terratrak vehicles to CARB in accordance with Paragraph 17 (Notices).
- (16) Documents. Aebi shall promptly email or mail the signed and dated Settlement Agreement, copy of proof of payment of the penalty and SEP amount, copies of the Payment Transmittal Forms, and proof of equipment removal to the physical or email address 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  
Vehicle, Parts, Consumer Products Enforcement Branch / Engine, and  
Parts Enforcement Section  
P.O. Box 2815  
Sacramento, CA 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to Aebi:  
Aebi & Co. AG Maschinenfabrik  
Buchmattstrasse 56  
CH - 3401 Burgdorf  
Switzerland

As to Aebi Legal Representation:  
Robert J. Meyers  
Crowell & Moring LLP  
1001 Pennsylvania Avenue NW  
Washington, DC 20004-2595  
RMeyers@crowell.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.

- (18) Recovery of Costs. If it becomes necessary for the Attorney General to file a civil action to enforce this Settlement Agreement, and the State of California prevails in such action, Aebi shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (19) Repeat Violations. Aebi agrees to comply with all regulatory requirements cited in this agreement 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 Legal Background and the Case Background and the subject matter thereof, 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 8 pages and 38 paragraphs.

- (21) Binding Effect. This Settlement Agreement binds Aebi, 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 of the Settlement Agreement shall be the date upon which this Settlement Agreement is fully executed by all Parties.
- (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.
- (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, Aebi 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 payable to the United States or to any state or local government located in the United States.
- (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 regarding the Settlement Agreement's terms and effects; 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 amount, and all other undertakings of Aebi set forth in this Settlement Agreement, CARB hereby releases Aebi and its principals, officers, 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 on behalf of the Party he or she represents.

#### **PENALTY BASIS**

- (35) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of thirty-seven thousand, five hundred dollars (\$37,500.00) per action under Health and Safety Code section 43016, for violations of the Off-Road CI Regulation. (Cal. Code Regs., tit.13, §§ 2420 et seq.) The penalty of \$70,312.00 over an unspecified number of days of violation is assessed based on 10 allegedly noncompliant off-road CI pieces of equipment or engines. The per unit penalty in this case is approximately \$7,031.00 per noncompliant unit.
- (36) Emissions. The provisions cited above do not prohibit emissions above a specified level. Without information on usage and emission rates, it is not practicable to quantify the excess emissions from the 10 units. However, since CARB has alleged that the off-road CI engines did not meet the regulatory requirements, all of the



**Aebi & Co. AG Maschinenfabrik**

Signature: \_\_\_\_\_ /S/ \_\_\_\_\_ /S/ \_\_\_\_\_

Name: \_\_\_\_\_ Thomas Schenkirsch \_\_\_\_\_ Thomas Berget \_\_\_\_\_

Title: \_\_\_\_\_ Group CFO \_\_\_\_\_ COO Werke DEICH \_\_\_\_\_

Date: \_\_\_\_\_ 11/23/2020 \_\_\_\_\_ 11/23/2020 \_\_\_\_\_