

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB"), with its principal office at 1001 I Street, Sacramento, California 95814 and WHITE RIVER MARINE GROUP, LLC (hereinafter "WRMG"), with its principal place of business at 2500 East Kearney, Springfield, Missouri 65898 (collectively, "The Parties").

RECITALS

- (1) CARB regulates Marine Watercraft under Title 13, California Code of Regulations, Article 4, section 2850 – 2869, Evaporative Emissions Requirements for Spark- Ignited Marine Watercraft with Gasoline-Fueled Engines. California Code of Regulations, title 13, section 2851 (13 CCR §2851) states, "This Article applies to all new model year (MY) 2018 or later spark-ignition marine watercraft (SIMW), spark-ignition marine engines (SIME), and/or any of its evaporative emission control system components for sale, lease, use or offered for sale, lease or use, or otherwise introduced into commerce in California (hereinafter collectively referred to as "sold or offered for sale")."
- (2) 13 CCR §2852(a) states, in pertinent part, "No person may manufacture for sale, advertise for sale, sell, or offer for sale in California, or introduce, deliver, or import into California SIMW, SIME, and/or its evaporative emissions control system components that are subject to any of the applicable standards and procedures in sections 2854 or 2855 if the SIMW or evaporative emissions control system component is: (1) Not certified under section 2856 as applicable..."
- (3) 13 CCR §2860 states, in pertinent part, "ARB recognizes that SIMW must be properly labeled in order to identify those that meet applicable evaporative emissions standards. These specifications require that evaporative system builders and/or SIME manufacturers affix a certification label (or labels) on each SIMW they assemble with an evaporative emissions control system."
- (4) 13 CCR §2443.3(a) states, "This section applies to model year 2001 and later spark-ignition personal watercraft and outboard marine engines and model year 2003 and later spark-ignition sterndrive/inboard marine engines, which have been certified to the applicable emission standards pursuant to Health and Safety Code section 43013."
- (5) 13 CCR §2443.3(b) states, "A nonpermanent label (i.e., hang tag) must be attached to each personal watercraft or outboard engine, as applicable, at time of sale. A nonpermanent label (i.e., hang tag) produced and supplied by the engine manufacturer must be attached, by the seller, to each sterndrive/inboard engine or watercraft, as applicable, when introduced for sale to ultimate purchasers."

- (6) California Health and Safety Code section 43016 (HSC §43016) states, in pertinent part, “A 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 thirty-seven thousand five hundred dollars (\$37,500) for each such action pursuant to this part. Violations involving portable fuel containers or small off-road engines shall be subject to a civil penalty not to exceed five hundred dollars (\$500) per unit. For a manufacturer or distributor who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, the payment of the penalty and making the product compliant with applicable emission control laws may be required by the executive officer of the state board as conditions for the continued sale in this state of those products regulated by the state board pursuant to this division.”
- (7) In April of 2018, CARB inspected WRMG California dealers, issued Notices of Violation (NOVs) #2753, #7753, and #7754 for noncompliant spark-ignition marine watercraft (SIMW) and missing nonpermanent labels (Hang Tags), and found 40 vessels with noncertified SIMW Evaporative Systems, and seven (7) vessels missing Hang Tags, offered for sale in violation of 13 CCR §2850 et seq. and 13 CCR §2443.3.
- (8) The manufacture for sale, advertisement, offers for sale, sales, and delivery of the noncertified SIMW in California were unlawful and in violation of 13 CCR §2852.
- (9) WRMG, promptly after receipt of the NOVs, took corrective action, completed SIMW Evaporative System certification and received a CARB Executive Order (EO), and fully cooperated with CARB the investigation and resolution of this matter.
- (10) CARB alleges that if the facts described in recital paragraphs 1-9 were proven, civil penalties could be imposed against WRMG as provided in H&SC §43016.
- (11) WRMG is willing to enter into this Agreement solely for the purpose of settlement and resolution of the allegations, claims, and violations identified herein. CARB accepts this Agreement in termination of the allegations, claims, and violations identified herein. Accordingly, the parties agree to resolve the allegations, claims, and violations identified herein 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 WRMG for the allegations, claims, and violations referred to above, CARB and WRMG agree as follows:

(1) Within thirty (30) days after execution of this Agreement by all parties, WRMG shall pay a civil penalty in the total sum of Two Hundred Three Thousand Five Hundred Dollars **(\$203,500.00)** as follows:

- \$203,500 payable to the **California Air Pollution Control Fund**

The signed Agreement and any future mailings or documents per the terms of this Agreement shall be mailed to:

**Ms. Claira Aramouni
Air Pollution Specialist
California Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, California 91731**

Please submit payment with the attached “Settlement Agreement Payment Transmittal Form” (Attachment A) and send to:

Certified or Cashier’s Checks:

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

Wire Transfers:

**State of California Air Resources Board
C/O Bank of America, Inter Branch to 0148
Routing No. 0260-0959-3 Account No. 01482-80005
Notice of Transfer: Asha Sharma Fax: (916) 322-9612
Reference: CARB Case # G00003**

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

Notification of each wire transfer shall be provided to:

**Ms. Claira Aramouni
Air Pollution Specialist
California Air Resources Board
Enforcement Division
Claira.Aramouni@arb.ca.gov
(626) 459-4327**

- (2) Effect of Untimely Payment. If any payment or payment installment is not made within ten (10) business days of the date specified above, the entire remaining balance, plus a penalty interest rate of 10% per annum on the entire remaining balance from the date initially due shall become immediately due and payable without notice or demand.
- (3) If the Attorney General files a civil action to enforce this settlement agreement, WRMG shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (4) This Agreement is limited to the allegations, claims, and violations described above. This Agreement does not release liability for any alleged claims or violations not identified herein, or any claims or violations based on allegations other than those identified herein.
- (5) It is agreed that if WRMG at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving WRMG, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against WRMG, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of WRMG's properties, or if any deposit account or other property of WRMG be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or WRMG takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.
- (6) WRMG shall not manufacture for sale, advertise for sale, sell, or offer for sale in California, or introduce, deliver, or import into California SIMW, SIME, and/or its evaporative emissions control system components in violation of California Code of Regulations, Title 13, Division 3 or Part 5, Division 26 of HSC.
- (7) This Agreement shall apply to and be binding upon WRMG and its principals, officers, directors, agents, dealers, 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.

- (8) Now therefore, in consideration of the payment by WRMG in the amount of Two Hundred Three Thousand Five Hundred Dollars (\$203,500) to the California Air Pollution Control Fund, CARB hereby releases WRMG and its principals, officers, directors, agents, dealers, subsidiaries, predecessors, and successors from the claims CARB may have based upon the events described in Recitals above.
- (9) This Agreement constitutes the entire agreement and understanding between CARB and WRMG concerning the claims, violations, 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 WRMG concerning these claims and violations.
- (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) 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.
- (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) 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.
- (14) 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.
- (15) 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.
- (16) This Agreement may be executed by facsimile and in counterparts by the Parties and their representatives, and the counterparts shall collectively constitute a

single, original document, notwithstanding the fact that the signatures may not appear on the same page.

- (17) Senate Bill 1402 (Dutton, chapter 413, statutes of 2010) requires CARB to provide information on the basis for the penalties it seeks (see H&SC section 39619.7). This 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 H&SC §43024. The per-unit penalty in this case is a maximum of \$37,500 per unit per strict liability violation. The penalty obtained in this case is \$5,000 per unit for 40 vehicles, plus an additional \$500 per unit for 7 units missing Hang Tags, for a total penalty of \$203,500. The penalty per unit in this case has been reduced because WRMG took immediate corrective action, has a history of compliance, fully cooperated with the investigation, submitted requested documentation, and put together a compliance plan to avoid future violations.

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 H&SC §43016 because WRMG brought into commerce uncertified units into California, in violation of 13 CCR §2852 and 13 CCR §2443.3, and manufactured for sale, advertised for sale, sold, or offered for sale in California, or introduced, delivered, or imported into California uncertified SIMW, SIME, and/or its evaporative emissions control system components as described above.

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. However, since the vehicles were not certified by CARB, all emissions attributable to them are illegal and excess, but quantifying them is not practicable because the information required to do so is unavailable.

- (18) WRMG 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 H&SC §43024, has explained the manner in which the penalty amount was calculated, 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.

- (19) 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 cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.
- (20) The penalty was also based on confidential business information provided by WRMG that is not retained by CARB in the ordinary course of business. The penalty was also based on confidential settlement communications between CARB and WRMG that CARB does not retain in the ordinary course of business either. The penalty is the product of an arm's-length negotiation between CARB and WRMG and reflects CARB's assessment of the relative strength of its case against WRMG, the desire to avoid the uncertainty, burden, and expense of litigation, to obtain swift compliance with the law, and to remove any unfair advantage that WRMG may have secured from its actions.
- (21) WRMG represents that it understands the legal requirements applicable to introducing new vehicles into California.
- (22) The undersigned represent that they have the authority to enter this Agreement.

California Air Resources Board

WHITE RIVER MARINE GROUP, LLC

By: /S/

By: /S/

Name: Richard W. Corey

Name: Sheila Dormann, VP of Finance

Title: Executive Officer

Title: WRMG OFFICER

Date: 5/10/2021

Date: 12/18/2020