

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 Crary Industries, Inc. (Crary), with its principal location at 237 12th St NW, West Fargo, North Dakota 58078-1302 (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 engines (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 thirty-four dollars (\$534)¹ 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, Crary was organized under the laws of Illinois as a corporation and conducted business in the State of California.

¹ California Health and Safety Code § 43016 was amended, effective January 1, 2017. See 2016 Cal. Legis. Serv. Ch. 604 (A.B. 1685). This legislation allowed CARB to adjust the penalty based on the California Consumer Price Index. When adjusted accordingly, the penalty that applies is \$534.

- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) C00536, which was issued on August 3, 2021. CARB alleges Crary violated the Evaporative Emissions Regulation by manufacturing for sale or lease equipment powered by SORE, 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), resulting in six violations, as outlined in Notice of Violation C00536. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against Crary for each and every vehicle involved in the violations and each day.
- (7) Acknowledgment. Crary admits to the facts 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 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, Crary 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 Crary for the alleged violations referred to above in the Legal Background and Case Background, and Crary's agreement to complete all terms and conditions set forth below, CARB and Crary agree as follows:

- (9) Settlement Amount. Crary shall pay a civil penalty of two thousand four hundred three dollars (\$2,403.00 USD). Crary shall make payment in full within 30 calendar days from the date CARB notifies Crary of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Crary 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. Crary 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 Crary in accordance with Paragraph 12 (Notices).

- (11) Documents. Crary 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
P. O. Box 2815
Sacramento, California 95812
Settlement_Agreement@arb.ca.gov

As to Crary:

Hannah Tanata, Business Unit Director – Crary Bear Cat
Crary Industries, Inc.
237 12th St NW
West Fargo, North Dakota 58078-1302
hannah.tanata@bearcatproducts.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) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Crary shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (14) Repeat Violations. Crary agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (15) 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 33 paragraphs.
- (16) Binding Effect. This Settlement Agreement binds Crary, 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.

- (17) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (18) 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.
- (19) 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.
- (20) 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.
- (21) 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.
- (22) Not Tax Deductible. For purposes of this Settlement Agreement, Crary 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.
- (23) 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.
- (24) 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.
- (25) 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.

- (26) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (27) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (28) Release. In consideration of the full payment of the civil penalty and all other undertakings above, CARB hereby releases Crary 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.
- (29) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (30) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of five hundred dollars (\$534.00) 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 \$2,403 over an unspecified number of days of violation is for six noncompliant SORE equipment. The per unit penalty in this case is approximately \$400.50 per noncompliant unit.
- (31) 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. However, since CARB has alleged that the SORE equipment did not meet the regulatory requirements, all of the emissions from them were excess and illegal.
- (32) 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.

- (33) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Crary 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: 10/29/2021

Crary Industries, Inc.

Signature: /S/

Name: Hannah Tanata

Title: Business Unit Director – Crary Bear Cat

Date: 10/14/2021