

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 George L. Throop, Co. with its principal location at 444 N. Fair Oaks Ave. Pasadena, California 91103 (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 portable equipment, which has attributes of both mobile and stationary sources, and directs CARB to adopt a voluntary statewide registration program for portable equipment. (Health & Saf. Code §§ 41750, 41752, 41753, 41754, 43013, 43018.) The California Health and Safety Code also prohibits the falsification of any document required to be kept pursuant to any provision of Part 4 of the Health and Safety Code or of any CARB regulation. (Health & Saf. Code § 42402.4.)
- (2) **Regulation.** CARB adopted the "*Portable Engine and Equipment Registration Regulation*" (Cal. Code Regs., tit. 13, §§ 2450-2465) (PERP Regulation) to reduce emissions from portable equipment.
- (3) **Regulatory Provisions.** The PERP Regulation allows owners and operators of portable engines or equipment to register into the statewide program in lieu of district permitting. Portable engines or equipment that are not registered under this program are subject to districting permitting requirements and regulations. Owners and operators electing to register under the statewide PERP program must register equipment or engines, pay a fee, maintain records, provide records if requested, report, and are subject to inspections and testing. (Cal. Code Regs., tit. 13, §§ 2450-2465.)
- (4) **Penalty Provisions.** Failure to comply with the PERP Regulation's requirements is a violation of state law that may result in penalties up to five thousand dollars (\$5,000) for each strict liability violation of the PERP Regulation, and for each day during which a violation occurs. (Health & Saf. Code, § 42402; Cal. Code Regs., tit.13, § 2465.) Submission of a falsified document required to be kept pursuant to the PERP Regulation is a violation of state law that may result in penalties up to \$35,000. (Health & Saf. Code, § 42402.4).

CASE BACKGROUND

- (5) **Corporate Entity.** At all relevant times, George L. Throop, Co. was organized under the laws of California as a corporation and conducted business in the State of California.

- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) PERP-102019-01, which was issued on January 25, 2021. CARB alleges George L. Throop, Co. violated the PERP Regulation by owning or operating PERP equipment or engines in California that failed to comply with the requirements of the PERP Regulation by failing to maintain records in a centralized place of business for a five-year period and failing to make these records available to CARB or the districts upon request (Cal. Code Regs., tit. 13, § 2458), and submission of a falsified document. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against George L. Throop, Co. for each and every unit involved in the violations and each day.
- (7) Acknowledgment. George L. Throop, Co. 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, George L. Throop, Co. 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 George L. Throop, Co. for the alleged violations referred to above in the Legal Background and Case Background, and George L. Throop, Co.'s agreement to complete all terms and conditions set forth below, CARB and George L. Throop, Co. agree as follows:

- (9) Settlement Amount. George L. Throop, Co. shall pay a civil penalty of twenty-three thousand two hundred dollars (\$23,200.00 USD), and agrees to fund a Supplemental Environmental Project (SEP) entitled the Fresno Trees Project in the amount of twenty-three thousand two hundred dollars (\$23,200.00 USD), consistent with CARB's SEP Policy, for a total settlement of forty six thousand four hundred dollars (\$46,400.00 USD). George L. Throop, Co. shall make all payments within six months from the date CARB notifies George L. Throop, Co. of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. George L. Throop, Co. 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. George L. Throop, Co. 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 George L. Throop, Co. in accordance with Paragraph 15 (Notices).

- (11) SEP Payment Method(s). George L. Throop, Co. shall fund the SEP by wire transfer, credit card, or check, payable to the SEP implementer/recipient, using instructions provided separately by CARB in a Payment Transmittal Form. George L. Throop, Co. 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 George L. Throop, Co. in accordance with Paragraph 15 (Notices).
- (12) Prohibition Against Financial Benefit. George L. Throop, Co. has agreed that by funding the SEP entitled the Fresno Trees Project, George L. Throop, Co. will not receive any direct or indirect financial benefit, and that whenever George L. Throop, Co. publicizes or refers to the SEP or the results of the SEP, George L. Throop, Co. will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (13) 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, George L. Throop, Co. assigns any and all rights against the SEP implementer to CARB.
- (14) Documents. George L. Throop, Co. shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty and SEP, and a copy of the Payment Transmittal Form(s) to the address or email in Paragraph 15 (Notices).
- (15) 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
Citations and Registration Enforcement Branch
Equipment Registration Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

George L. Throop, Co. Settlement Agreement
Notice of Violation: PERP-102019-01

As to Throop:
George L. Throop, Co.
444 N. Fair Oaks Ave.
Pasadena, California 91103

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.

- (16) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, George L. Throop, Co. shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (17) Repeat Violations. George L. Throop, Co. agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (18) 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 7 pages and 36 paragraphs.
- (19) Binding Effect. This Settlement Agreement binds George L. Throop, Co., 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.
- (20) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (21) 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.
- (22) 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.

- (23) 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.
- (24) 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.
- (25) Not Tax Deductible. For purposes of this Settlement Agreement, George L. Throop, Co. 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.
- (26) 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.
- (27) 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.
- (28) 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.
- (29) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (30) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.

- (31) Release. In consideration of full payment of the civil penalty and SEP payment(s), and all other undertakings above, CARB hereby releases George L. Throop, Co. 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.
- (32) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (33) Per Unit Penalty. The per unit penalty in this case is a maximum of five thousand and two hundred thirty-five dollars (\$5,235) per action under Health and Safety Code section 42402, for violations of the PERP Regulation (Cal. Code Regs., tit.13, §§ 2450 et seq.) Each day during any portion of which a violation occurs is a separate offense. (Health & Saf. Code, § 42402(d)). Submission of a falsified document required to be kept pursuant to the PERP Regulation is a violation of state law that may result in penalties up to \$36,645. (Health & Saf. Code, § 42402.4). This case was not determined on a per unit basis.
- (34) Emissions. The provisions cited above do not prohibit emissions above a specified level. Without information, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the portable engines or equipment did not meet the regulatory requirements, and as such was not registered, any emissions would be excess and illegal.
- (35) 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.
- (36) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by George L. Throop Co. and confidential settlement communications.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Signed By: Ellen M. Peter

Title: Chief Counsel

Date: 11/2/2021

George L. Throop, Co.

Signature: /S/

Name: Jeffrey Throop

Title: President

Date: 10/21/2021