

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 Western Oilfields Supply Company, a Delaware corporation doing business as Rain for Rent (hereinafter "Rain for Rent"), with its principal location at 3404 State Road, Bakersfield, California 93308 (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 prior to 2017 is a violation of state law that may result in penalties up to fifty dollars (\$50) or five thousand dollars (\$5,000) for each strict liability violation of the Off-Road CI Regulation, respectively, for each day in which the violation occurs. (Health & Saf. Code, § 43154; Health & Saf. Code, § 43212; Cal. Code Regs., tit.13, § 2420 et seq.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Rain for Rent was a Delaware corporation qualified to conduct business in the State of California.

- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) EPES-2021-C00542, which was issued on July 21, 2021. CARB alleges Rain for Rent violated the Off-Road CI Regulation by introducing or delivering for introduction into commerce into California, new off-road CI engines between the 2010 through 2015 calendar years that failed to comply with the requirements of the Off-Road CI Regulation by failing to notify and report the use of Tier 4 flexibility engines (Cal. Code Regs., tit. 13, § 2423(d)(7)), and also failure to correctly label those Tier 4 flexibility engines as replacements for the original off-road CI engines (Cal. Code Regs., tit. 13, § 2423(j)(1)(D)(2)), therewith resulting in 25 engine violations of each, as outlined in Notice of Violation EPES-2021-C00542. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against Rain for Rent for each and every off-road CI engine involved in the violations and each day.
- (7) Acknowledgment. Rain for Rent 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, Rain for Rent 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 Rain for Rent for the alleged violations referred to above in the Legal Background and Case Background, and Rain for Rent's agreement to complete all terms and conditions set forth below, CARB and Rain for Rent agree as follows:

- (9) Settlement Amount. Rain for Rent shall pay a civil penalty of six thousand three hundred thirteen dollars (\$6,313.00 USD), and agrees to fund a Supplemental Environmental Project (SEP) entitled "Placer County Community Based SEP - Phase 2," in the amount of six thousand three hundred twelve dollars (\$6,312.00 USD), consistent with CARB's SEP Policy, for a total settlement of twelve thousand six hundred twenty-five dollars (\$12,625.00 USD). Rain for Rent shall make all payments within 30 calendar days from the date CARB notifies Rain for Rent of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Rain for Rent 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. Rain for Rent 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 Rain for Rent in accordance with Paragraph 16 (Notices).

- (11) SEP Payment Method(s). Rain for Rent shall fund the SEP by wire transfer, credit card, or check, payable to the SEP implementer/recipient, Placer County Air Pollution Control District, using instructions provided separately by CARB in a Payment Transmittal Form. Rain for Rent 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 Rain for Rent in accordance with Paragraph 16 (Notices).
- (12) Prohibition Against Financial Benefit. Rain for Rent has agreed that by funding the SEP entitled "Placer County Community Based SEP - Phase 2," Rain for Rent will not receive any direct or indirect financial benefit, and that whenever Rain for Rent publicizes or refers to the SEP or the results of the SEP, Rain for Rent 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, Rain for Rent assigns any and all rights against the SEP implementer to CARB.
- (14) Other Relief. Rain for Rent shall remove the subject 25 noncompliant off-road CI engines from its current inventory and render them permanently inoperable.
- (15) Documents. Rain for Rent 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 16 (Notices).
- (16) 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 95812-2815
Settlement_Agreement@arb.ca.gov

As to Rain for Rent:

James M. Simons
3404 State Road
Bakersfield, California 93308
jmsimons@rainforrent.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.

- (17) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Rain for Rent shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (18) Repeat Violations. Rain for Rent agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (19) 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 seven pages and 37 paragraphs.
- (20) Binding Effect. This Settlement Agreement binds Rain for Rent, 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.
- (21) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (22) 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.

- (23) 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.
- (24) 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.
- (25) 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.
- (26) Not Tax Deductible. For purposes of this Settlement Agreement, Rain for Rent 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.
- (27) 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.
- (28) 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.
- (29) 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.

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

PENALTY BASIS

- (34) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of five thousand dollars (\$5,000) per action under Health and Safety Code section 43154, and fifty dollars (\$50) per action under Health and Safety Code section 43212, for violations of the Off-Road CI Regulation (Cal. Code Regs., tit.13, §§ 2420 et seq.). The penalty of twelve thousand six hundred twenty-five dollars (\$12,625) over an unspecified number of days of violation is for 25 noncompliant off-road CI equipment or engines. The per unit penalty in this case is approximately five hundred five dollars (\$505) per noncompliant engine.
- (35) 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 off-road CI engines did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- (36) 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.

- (37) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Rain for Rent 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: 10/28/2021

Western Oilfields Supply Company, a Delaware corporation doing business as Rain for Rent

Signature: /S/

Name: James Simons

Title: Executive Vice President, Corporate Operations

Date: 10/8/2021