

SETTLEMENT AGREEMENT AND RELEASE

CARB and Amerisun, Inc.

Page 1 of 7

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB"), with its principal office at 1001 I Street, Sacramento, California 95814 and Amerisun, Inc. (hereinafter "AMERISUN"), with its principal place of business at 1141 Bryn Mawr Ave, Itasca, Illinois 60143 (collectively, "The Parties").

RECITALS

1. California Code of Regulations, title 13, section 2400(a)(2) states, "Every new small off-road engine that is manufactured for sale, sold, or offered for sale in California, or that is introduced, delivered or imported into California for introduction into commerce, and that is subject to any of the standards prescribed in this article must be covered by an Executive Order, issued pursuant to this article."
2. California Code of Regulations, title 13, section 2401(a)(39) defines "small off-road engine" as "any engine that produces a gross horsepower less than 25 horsepower (at or below 19 kilowatts for 2005 and later model year). Or is designed (e.g., through fuel feed, valve timing, etc.) to produce less than 25 horsepower (at or below 19 kilowatts for 2005 and later model year, that is not used to propel a licenses or-road motor vehicle, an off-road motorcycle, an all-terrain vehicle, a marine vessel, a snowmobile, a model airplane, a model car, or a model boat... Uses for small off-road engines include, but are not limited to, applications such as lawn mowers, weed trimmers, chain saws, golf carts, specialty vehicles, generators and pump."
3. California Code of Regulations, title 13, section 2404(a) provides, "The Air Resources Board recognizes that certain emissions-critical or emissions-related parts must be properly identified and maintained in order for engines to meet the applicable emission standards... These specifications require engine or equipment manufacturers to affix a label (or labels) on each production engine (or equipment, as applicable) to provide the engine or equipment owner and service mechanic with information necessary for the proper maintenance of these parts in customer use..."
4. California Code of Regulations, title 13, section 2404(c)(4)(H) requires "An unconditional statement of compliance with the appropriate calendar year (for 1995-1999) or model year(s) (for 2000 and later) California regulations; for example, 'THIS ENGINE MEETS 2005 CALIFORNIA EXH EMISSION REGULATIONS FOR SMALL OFF-ROAD ENGINES.'"
5. The California Exhaust Emission Standards and Test Procedures for 1995 and

SETTLEMENT AGREEMENT AND RELEASE

CARB and Amerisun, Inc.

Page 2 of 7

later Small Off-Road Engines (Test Procedures) provides, "Labeling required pursuant to Section 2404, Title 13 of the California Code of Regulations must conform with the requirements specified therein."

6. Health and Safety Code Section 43016(a)(1) states, "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 March 2019, CARB staff purchased a lawnmower under the product name Powersmart that did not have proper emission labels and was deemed not legal for sale in California. The lawnmower in question was distributed by AMERISUN.
8. In April 2019, CARB staff sent a Cease and Desist (C&D) letter to AMERISUN to halt all sales of the engine in question and provide sales records.
9. Upon further investigation it was discovered that the lawnmowers were mislabeled since the label did not have an unconditional statement of compliance, as required by the California Code of Regulations, title 13, section 2404(c)(4)(H), even though the units did in fact comply with the emissions requirements of section 2404.
10. AMERISUN subsequently reported 23 sales of the lawnmowers without a correct label.
11. CARB alleges that if the facts described in recital paragraphs 1-10 were proven, civil penalties could be imposed against AMERISUN, as provided in Health and Safety Code section 43016.
12. AMERISUN promptly and fully cooperated with CARB in the investigation of this matter.
13. AMERISUN is incorporated in Illinois and doing business in California.
14. AMERISUN admits the facts presented in recital paragraphs 1-10, but denies any liability arising therefrom.

SETTLEMENT AGREEMENT AND RELEASE

CARB and Amerisun, Inc.

Page 3 of 7

15. 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 Agreement, without the need for formal litigation. CARB accepts this Agreement in termination of this matter.

TERMS AND RELEASE

In settlement of the claims described above and in consideration of CARB not filing a legal action against AMERISUN for the alleged violations referred to above, as well as other terms set out below, CARB and AMERISUN agree as follows:

16. AMERISUN shall pay the total sum of five hundred seventy-five dollars (**\$575.00**) as a penalty by certified check or wire transfer to the **California Air Pollution Control Fund** within **30 days** from the date it signs this Agreement.
17. The signed Agreement and any future mailings or documents required per the terms of this Agreement shall be mailed to:

Tony Zeng
Air Resources Engineer
California Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, CA 91731

Each check shall be accompanied with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) and sent to:

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

Each wire transfer shall be accompanied with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) and sent to:

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: Edna Murphy, Fax: (916) 322-9612
Reference: CARB Case # C00230

SETTLEMENT AGREEMENT AND RELEASE

CARB and Amerisun, Inc.

Page 4 of 7

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

Notification of each wire transfer shall be provided to:

Tony Zeng
California Air Resources Board
Enforcement Division
Tony.Zeng@arb.ca.gov
(626) 350-6505

18. If a 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 percent per annum on the entire remaining balance from the date initially due shall become immediately due and payable without notice or demand.
19. AMERISUN represents that it is aware of the statutory and regulatory authority cited in recital paragraphs 1-6, and agrees that it will not sell, supply, offer for sale, advertise, or manufacture for sale in California small off-road engines unless CARB certification has first been obtained.
20. AMERISUN also agrees that it will label all of its small off-road engines that are manufactured for sale in California with labels that comply with California Code of Regulations, title 13, section 2404.
21. This Agreement shall apply to and be binding upon AMERISUN and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
22. In consideration of the payment by AMERISUN to the California Air Pollution Control Fund in the amount specified above, CARB hereby releases AMERISUN and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from all claims that are subject to this Agreement as described in the recitals above.
23. This Agreement constitutes the entire agreement and understanding between CARB and AMERISUN concerning the claims 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 AMERISUN concerning these claims.
24. The effective date of this Agreement shall be the date upon which it is fully

SETTLEMENT AGREEMENT AND RELEASE

CARB and Amerisun, Inc.

Page 5 of 7

executed.

25. 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.
26. It is further agreed that the penalties described in this 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. 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.
28. 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.
29. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable in any jurisdiction, the remainder of this Agreement remains in full force and effect to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.
30. 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.
31. 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.
32. The parties agree that 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.
33. The terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
34. This Agreement shall further serve to toll any statute of limitations until all terms

and conditions of this Agreement have been fulfilled.

35. Penalty Determination

Below is the basis for the assessed penalties (Health & Saf. Code § 39619.7.)

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 Health and Safety Code section 43016, because AMERISUN sold, and/or offered for sale, and/or advertised small off-road engines that violated the certification requirements pursuant to California Code of Regulations, title 13, section 2404(c)(4)(H).

The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit or per vehicle basis for the penalty.

The penalties in this matter were determined in consideration of all relevant circumstances, including the eight statutory factors. (Health & Saf. Code § 42403.) The per unit penalty in this case is a maximum of \$500 per unit per strict liability violation. The penalty obtained in this case is \$25 per unit for 23 units. This is due to AMERISUN's cooperation and the speedy efforts taken by the company to correct the issue. In addition, the units fully complied with the emission limits.

Penalties were determined based on the unique circumstances of this matter, considered together with the need to set penalties at levels sufficient to deter violations, the need to remove any economic benefit from noncompliance, to obtain swift compliance, and considering past penalties in similar cases, 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.

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. Since the violation involves a labeling requirement, we are unable to quantify the excess emissions that may have resulted therefrom.

36. AMERISUN acknowledges that CARB has complied with all provisions of Health and Safety Code section 39619.7, and considered the relevant factors in Health and Safety Code sections 42403 and 43024.

37. The penalty in this case was based in part on confidential business information

SETTLEMENT AGREEMENT AND RELEASE

CARB and Amerisun, Inc.

Page 7 of 7

provided by AMERISUN that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and AMERISUN that CARB does not retain in the ordinary course of business either.

38. The undersigned represent that they have full power and authority to enter this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Amerisun, Inc.

By: _____ /S/ _____

Name: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Date: 8/30/19

By: _____ /S/ _____

Name: Tom Ellspermann

Title: President

Date: 7/3/19