

## 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 OREC America, Inc. (hereinafter "OREC"), with its principal place of business at 247545 Avante Drive, Wixom, Michigan 48393 (collectively, "The Parties").

### RECITALS

1. The California Health and Safety Code mandates the reduction of emission of air pollution from off-road engines. (Health & Saf. Code §§ 43013; 43018.)
2. CARB adopted the "*Small Off-Road Engines*" Regulation (Cal. Code Regs., tit. 13, §§ 2400-2409) (hereinafter "SORE Regulation") to reduce emissions of oxides of nitrogen (NOx) and hydrocarbons (HC) from off-road spark-ignited small off-road engines (SORE) rated gross horsepower less than 25 horsepower (19 kilowatts), and equipment utilizing such engines.
3. Furthermore, CARB adopted the "*Evaporative Emission Requirements for Off-Road Equipment*" Regulation (Cal. Code Regs., tit. 13, §§ 2750-2774) (hereinafter "Evaporative Emissions Regulation") to reduce emissions of oxides of nitrogen (NOx) and hydrocarbons (HC) from off-road SORE engines.
4. Both the SORE Regulation and the Evaporative Emissions Regulation prohibit SORE engines from being manufactured for sale, sold, leased, offered for sale in California, introduced, delivered, or imported into California for introduction into commerce without an Executive Order prior to the date the engine enters California. (Cal. Code Regs., tit. 13, §§ 2400(a); 2751(a).)
5. Failure to comply with any requirement of the SORE Regulation and Evaporative Emissions Regulation for SORE engines is a violation of state law that may result in penalties up to five hundred dollars (\$500) for each strict liability violation, respectively, for each action. (Health & Saf. Code, § 43016.)
6. In March 2019, OREC informed CARB staff that it had sold their Brush Riding Mowers without certification and assumed their units qualified as preempt equipment. The units in question did not qualify and were required to be certified under both evaporative and exhaust emission standards.
7. In March 2019, CARB sent a Cease and Desist letter to OREC to halt all sales of their Brush Riding Mowers.
8. OREC promptly and fully cooperated with CARB in the investigation of this matter.

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9. OREC is incorporated in Michigan and doing business in California.
10. CARB alleges that if the facts described in recital paragraphs 1-7 were proven, civil penalties could be imposed against OREC, as provided in Health and Safety Code section 43016.
11. OREC admits the facts presented in recital paragraphs 1-7 but denies any liability arising therefrom.
12. 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 OREC for the alleged violations referred to above, as well as other terms set out below, CARB and OREC agree as follows:

13. Upon execution of this Agreement, OREC shall pay the total sum of five hundred dollars (**\$500.00**) 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.
14. OREC shall mail the signed and dated Agreement, a copy of the Settlement Agreement Payment Transmittal Form (Attachment A), and notification of the wire transfer if applicable, and any future mailings or documents required per the terms of this Agreement 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

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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: Asha Sharma, Fax: (916) 322-9612  
Reference: CARB Case # C00228

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

15. 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.
16. OREC represents that it is aware of the statutory and regulatory authority cited in recital paragraphs 1-5, 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.
17. This Agreement shall apply to and be binding upon OREC 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.
18. In consideration of the payment by OREC to the California Air Pollution Control Fund in the amounts specified above, CARB hereby releases OREC and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from the claims subject to this Agreement as described in the recitals above.
19. This Agreement constitutes the entire agreement and understanding between CARB and OREC 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 OREC concerning these claims.

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20. The effective date of this Agreement shall be the date upon which it is fully executed.
21. 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.
22. It is further agreed that the stipulated penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7).
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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.
29. The terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.

30. This Agreement shall further serve to toll any statute of limitations until all terms and conditions of this Agreement have been fulfilled.

**31. 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 OREC 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 2400(a)(2) and 2753.

**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 \$250 per unit for 2 units. This is due to OREC's cooperation and the speedy efforts taken by the company to correct the issue.

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. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available. There are no testing results available that would indicate how much emissions increased as a result of the use of the uncertified small off-road engines. However, since the small off-road engines were not properly certified for sale in California, emissions

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attributable to them are illegal and excess as well. In the interests of settlement and because of the time and expense involved, the parties elected not to do such testing.

32. OREC 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.


33. The penalty in this case was based in part on confidential business information provided by OREC 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 OREC that CARB does not retain in the ordinary course of business either.


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

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

OREC America, Inc.

By:   
Name: Dr. Todd P. Sax  
Title: Chief, Enforcement Division  
Date: 5/23/19

By:   
Name: Ken Ichikawa  
Title: General Manager  
Date: 4/26/2019