

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 Pleasurecraft Marine Engine CO., doing business as PCM, with its principal location at 1737 US Highway 76, Little Mountain, South Carolina 29075-9451 (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 "Spark-Ignition Marine Engines" Regulation (Cal. Code Regs., tit. 13, §§ 2440-2447) (SIME Regulation) to reduce emissions of, inter alia, oxides of nitrogen (NOx) and hydrocarbons (HC) from these off-road engines.
- (3) Regulatory Provisions. Manufacturers of new spark-ignition marine engines (SIME) that are manufactured for sale, sold, offered for sale, introduced, delivered, or imported for introduction into commerce into California are required to certify these engines and obtain an Executive Order (EO) from CARB. The engines must meet the exhaust emission and evaporative emission standards, contain an onboard engine malfunction detection system, and the manufacturer must also properly label, meet defects warranty requirements, report, and meet the testing and recall requirements under the SIME Regulation. (Cal. Code Regs., tit. 13, §§ 2440-2447.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to forty thousand seven hundred twenty-five dollars (\$40,725.00 USD) for each strict liability violation of the SIME Regulation, respectively, for each delinquent annual production report. (Health & Saf. Code, § 43016, 43154; Cal. Code Regs., tit.13, § 2440 et seq.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Pleasurecraft Marine Engine CO., was organized under the laws of Ohio as a Corporation, doing business as PCM, and sold marine engines to manufacturers located in the State of California.
- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) VES-2022-C00431, which was issued on August 31, 2022. CARB alleges PCM violated the SIME Regulation by manufacturing for sale, selling, offering for sale, introducing, importing, or delivering for introduction into commerce in California,

new SIME that failed to comply with the SIME Regulation's. Specifically, PCM failed to: report their annual SIME production to CARB (Cal. Code Regs., tit. 13, § 2442(b)(1)(E); resulting in three years of violations, as outlined in NOV VES-2022-C00431. CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against PCM for each, and every report involved in the violations.

- (7) Acknowledgment. PCM 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, PCM 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 PCM for the alleged violations referred to above in the Legal Background and Case Background, and PCM's agreement to complete all terms and conditions set forth below, CARB and PCM agree as follows:

- (9) Settlement Amount. PCM shall pay a civil penalty of twenty-two thousand five hundred dollars (\$22,500.00 USD) (the "Civil Penalty") and agrees to fund a Supplemental Environmental Project (SEP) entitled Fresno Trees Phase 4 – Malaga Recreation Park in the amount of twenty-two thousand five hundred dollars (\$22,500.00 USD), consistent with CARB's SEP Policy, for a total settlement payment of forty-five thousand dollars (\$45,000.00 USD). PCM shall make both payments within 30 calendar days from the date CARB notifies PCM of the full execution of the Settlement Agreement ("Notification") in accordance with the payment schedule in Paragraph 10 (Payment Schedule).
- (10) Payment Schedule.

| Payment Due Date: | In the Amount of and Payable To: |
|---------------------------|---|
| 30 Days from Notification | \$22,500 California Air Resources Board |
| 30 Days from Notification | \$22,500 SEP Administrator/Tree Fresno |

- (11) Civil Penalty Payment Method. PCM shall pay the Civil Penalty by check, credit card, wire transfer, or portal, payable to the "California Air Resources Board," using instructions provided separately by CARB in a Payment Transmittal Form.

PCM is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. At the time payment is made, PCM shall email CARB proof of payment, including the Payment Transmittal Form, to the email address for CARB listed in Paragraph 16 (Notices). CARB shall deposit the civil penalty amount into CARB's 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 PCM in accordance with Paragraph 16 (Notices).

- (12) SEP Payment Method(s). PCM shall fund the SEP by wire transfer or check, payable to the SEP Administrator/Recipient, Tree Fresno, using instructions provided separately by CARB in a Payment Transmittal Form. PCM is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. At the time payment is made, PCM shall provide CARB with proof of payment, including a copy of the SEP Payment Transmittal, at the email address provided in Paragraph 16 (Notices). Should payment instructions change, CARB will provide notice to PCM in accordance with Paragraph 16 (Notices).
- (13) Prohibition Against Financial Benefit. PCM has agreed that by funding the SEP entitled Fresno Trees Phase 4 – Malaga Recreation Park, PCM will not receive any direct or indirect financial benefit, and that whenever PCM publicizes or refers to the SEP or the results of the SEP, PCM will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (14) Assignment of Rights. In the event the SEP Administrator/Recipient 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 Administrator, 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 its Air Pollution Control Fund. Accordingly, PCM assigns any and all rights against the SEP Administrator to CARB.
- (15) Documents. PCM shall promptly email or mail the signed and dated Settlement Agreement to the CARB Enforcement Investigator managing the settlement or may email or mail the signed and dated Settlement Agreement to the email or address provided for CARB 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
Vehicle, Parts, and Consumer Products Enforcement Branch
Vehicle Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov (Send Proof of Payment here)

As to Pleasurecraft Marine Engine CO., doing business as PCM:

Mark McKinney
1737 US Highway 76
Little Mountain, South Carolina 29075-9451
mmckinney@pleasurecraft.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, PCM shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (18) Repeat Violations. PCM 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 8 pages and 37 paragraphs.
- (20) Binding Effect. This Settlement Agreement binds (a) PCM, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and (b) CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement, to the terms hereof, including in particular the Release in Section 31 below.
- (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) 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 payments, and all other undertakings above, CARB hereby releases PCM and its principals, officers, receivers, trustees, successors and assignees, from any fines, penalties, injunctions, expenses, or liabilities, suits, causes of action or claims arising out of or based on the circumstances described in the Notice of Violation or in the paragraphs contained in the Case Background above (except with regard to enforcement of the Settlement Agreement).
- (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 or per engine penalty in this case is a maximum of forty thousand, seven hundred twenty-five dollars (\$40,725.00 USD) per action under Health and Safety Code sections 43016 and 43154, for violations of the SIME Regulation. (Cal. Code Regs., tit. 13, §§ 2440 et seq.) The penalty of \$45,000 over an unspecified number of days of violation is for three delinquent annual production reports. The per unit penalty in this case is approximately \$15,000 per noncompliant unit.
- (34) 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 SIME did not meet the regulatory requirements, all emissions from it are presumed by CARB to 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 PCM or confidential settlement communications.
- (37) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil (including regulatory and administrative) claims of CARB for the violations alleged in this Settlement Agreement.
 - (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against PCM with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against PCM with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by PCM to CARB.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
 - (v) Any criminal liability.
 - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
 - (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, PCM shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
 - (d) This Settlement Agreement does not limit or affect the rights of PCM or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against PCM, except as otherwise provided

by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.

- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. PCM is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; PCM's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that PCM's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Ellen M. Peter

Title: Chief Counsel

Date: November 30, 2023

Pleasurecraft Marine Engine CO., doing business as PCM

Signature: /S/

Name: Mark McKinney

Title: President, PCM

Date: October 17, 2023