

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into between the State of California Air Resources Board (ARB) with its principal office at 1001 "I" Street, Sacramento, California 95814, and TJ/H2b incorporated (TJ/H2b), 3123 Fite Circle, Sacramento, California 95827.

RECITALS

1. The Global Warming Solutions Act of 2006 authorizes ARB to adopt regulations to reduce greenhouse gas emissions (Health & Safety Code section 38530).
2. Pursuant to that authority, ARB adopted the Regulation for Reducing Sulfur Hexafluoride Emissions, California Code of Regulations (CCR), title 17, section 95340, et seq. (SF₆ Regulation). The SF₆ Regulation became fully effective on January 1, 2010.
3. The SF₆ Regulation sets forth that no person shall own or otherwise possess sulfur hexafluoride (SF₆) after January 1, 2011 (17 CCR 95343(a) (2)).
4. The SF₆ Regulation sets forth that no person shall intentionally emit SF₆ in California (17 CCR 95343(a) (5)).
5. TJ/H2b violated the SF₆ Regulation by:
 - Possessing SF₆ on or after January 1, 2011, and
 - Intentionally emitting SF₆ to the atmosphere.
6. TJ/H2b admits to the facts in recitals 1-5 above.
7. The SF₆ Regulation provides that any violation of any subpart of the regulation constitutes a single separate violation for each day of the calendar year (17 CCR 95344(a)).
8. Violation of the SF₆ Regulation is a violation of State law. Health & Safety Code sections 38580 and 42400 et seq. authorize strict liability penalties not to exceed ten thousand dollars (\$10,000) per day, for each day that the violation occurs.
9. ARB and TJ/H2b desire to resolve completely the violations alleged in NOV #SF6-2016-616 under the terms of this Agreement, in lieu of litigation and TJ/H2b agrees to take the actions enumerated below under "TERMS AND RELEASE."

TERMS AND RELEASE

10. Upon execution of this Agreement, TJ/H2b agrees to pay civil penalties in the amount of TEN THOUSAND DOLLARS (\$10,000.00). Payment of the penalties shall be as follows:

Payment shall be made to the "Air Pollution Control Fund" on behalf of TJ/H2b and is due upon execution of this Agreement. Payment shall be made in accordance with the instructions in Attachment A to this Agreement.

Please submit the signed Settlement Agreement to:

Mr. Taylor Grose,
Air Resources Engineer
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, California 95812

11. TJ/H2b shall not violate the SF₆ Regulation.
12. 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 benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.
13. This Agreement shall apply to and be binding upon, and inure to the benefit of, TJ/H2b, and its officers, directors, receivers, trustees, employees, successors and assignees and subsidiary corporations, and affiliates, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
14. This Agreement constitutes the entire agreement and understanding between ARB and TJ/H2b concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and TJ/H2b concerning the subject matter hereof.
15. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement. This Agreement shall further serve to toll any statute of limitation until six months after all terms and conditions of this Agreement have been fulfilled.

16. Failure to comply with any of the terms of this Agreement shall void the agreement and ARB may take enforcement action based on the initial violation and any subsequent violations of this Agreement.
17. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
18. 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.
19. This Agreement is deemed to have been drafted equally by ARB and TJ/H2b; it will not be interpreted for or against either party on the ground that said party drafted it.

The manner in which the penalty was determined.

20. Health & Safety Code section 39619.7 requires ARB to explain the basis for the penalties it seeks. This information is provided throughout this Agreement and is summarized here. Penalties must be set at levels sufficient to deter violations. The penalties in this matter were determined based on all relevant circumstances, including the unique circumstances of this case, giving consideration to the eight factors specified in Health & Safety Code Section 42403. Those circumstances were considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, penalties sought in other cases, and the potential costs and risk associated with litigating these particular violations. In this matter there were a number of mitigating factors including: the fact that this was a first time violation; TJ/H2b cooperated fully with the investigation; TJ/H2b's good overall compliance history; and TJ/H2b's efforts to rapidly come into compliance by applying for an exemption from the requirement of §95343 that prohibits possession of SF₆ and implementing changes to their business practices to prevent future emissions. Penalties in future cases might be smaller or larger. Specifically, this penalty reflects a penalty of \$10,000.00 per day for one (1) day of violation.

The legal provisions under which the penalty was assessed.

The penalty is based on Health and Safety Code section 42402 and CCR, title 17, section 95358, the provisions intended to govern SF₆ Regulation violations. Health & Safety Code sections 38580 and 42402 provide for strict liability of \$1,000 or up to \$10,000 per violation.

Whether the governing provisions prohibit emissions at a specified level, and, if so a quantification of excess emissions if it is practicable to do so.

The SF₆ Regulation prohibits possession of SF₆ and any intentional emissions of SF₆. Over a 100-year period, SF₆ is 23,900 times more effective at trapping infrared radiation than an equivalent amount of carbon dioxide. SF₆ is also a very stable chemical, with an atmospheric lifetime of 3,200 years. In this case the ARB staff estimates that TJ/H2b intentionally emitted approximately 38 pounds of SF₆, equivalent to 439 tons of carbon dioxide, in 2016.

21. TJ/H2b acknowledges that ARB has complied with section 39619.7 in investigating, prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health & Safety Code section 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
22. The penalty was based on confidential settlement communications between ARB and TJ/H2b. The penalty is the product of an arm's length negotiation between ARB and TJ/H2b and reflects ARB's assessment of the relative strength of its case against TJ/H2b, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that TJ/H2b may have secured from its actions.
23. Now therefore, in consideration of the payment on behalf of TJ/H2b to the California Air Resources Board, ARB hereby finally and unconditionally resolves with TJ/H2b and its principals, officers, agents, affiliates, predecessors and successors and assigns from any and all claims for the past violations of the SF₆ Regulation that ARB may have based on circumstances of the type described in the Recitals and releases them from any further liability in connection with such matter.

Settlement Agreement
ARB and TJ/H2b
January 11, 2017

24. The undersigned represent that they have the authority to enter into this Agreement.

SIGNATURES

California Air Resources Board

TJ/H2b Ltd. Inc

By: 
Dr. Todd P. Sax, Chief
Enforcement Division

By: 
Name: Dean Rose
Title: Controller

Date: 2/10/17

Date: 1/13/17