

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB"), with its principal office at 1001 I Street, Sacramento, California 95814 and KRONE NA, INC. (hereinafter "Krone NA") with its principal place of business at 3363 Miac Cove, Memphis, Tennessee 38118, collectively, "The Parties."

RECITALS

1. California Code of Regulations, Title 13, section 2420(a)(1) states, "This article shall be applicable to new heavy-duty off-road compression-ignition engines, including all heavy-duty off-road alternate-fueled compression-ignition engines, including those engines derived from existing diesel cycle engines (hereinafter all such engines shall be referred to as compression-ignition engines), produced on or after January 1, 1996, and all other new 2000 model year and later off-road compression-ignition engines, with the exception of all engines and equipment that fall within the scope of the preemption of Section 209(e)(1) of the Federal Clean Air Act (42 U.S.C. 7543(e)(1) and as defined by regulation of the U.S. Environmental Protection Agency."
2. California Code of Regulations, Title 13, section 2420(a)(3) states, "Every new off-road compression-ignition engine that is manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into California and that is subject to any of the standards prescribed in this article and documents incorporated by reference therein, is required to be certified for use and sale by the manufacturer through the Air Resources Board and covered by an Executive Order, issued pursuant to Chapter 9, Article 4, Section 2423."
3. California Health and Safety Code section 43152 states, "No person who is engaged in this state in the business of selling to an ultimate purchaser, or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently import, deliver, purchase, receive, or otherwise acquire a new motor vehicle, new motor vehicle engine, or vehicle with a new motor vehicle engine which is intended for use primarily in this state, for sale or resale to an ultimate purchaser who is a resident of or doing business in this state, or for registration, leasing or rental in this state, which has not been certified pursuant to this chapter. No person shall attempt or assist in any such act."
4. California Health and Safety Code section 43153 states, "No person who is engaged in this state in the business of selling to an ultimate purchaser or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently sell, or offer to sell, to an ultimate purchaser who is a resident of or doing business in this state, or lease, offer to lease, rent, or offer to rent, in this state any new motor

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vehicle, new motor vehicle engine, or vehicle with a new motor vehicle engine, which is intended primarily for use or for registration in this state, and which has not been certified pursuant to this chapter. No person shall attempt or assist in any such action.”

5. California Health and Safety Code section 43154(a) states, “Any person who violates any provision of this article shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) per vehicle.”
6. California Health and Safety Code section 43211 states, in pertinent part, “No new motor vehicle shall be sold in California that does not meet the emission standards adopted by the state board, and any manufacturer who sells, attempts to sell, or causes to be offered for sale a new motor vehicle that fails to meet the applicable emission standards shall be subject to a civil penalty of five thousand dollars (\$5,000) for each such action.”
7. Krone NA imports, manufacturers, and sells large agricultural harvesting equipment in North America, including California.
8. Krone NA, through a voluntary internal compliance audit in 2012, discovered noncertified off-road compression-ignition engines were utilized in some of its agricultural harvesters.
9. Krone NA, upon conclusion of its internal audit, took immediate corrective action, regarding its noncompliant agricultural harvesters, to remediate the noncertified off-road compression-ignition engine sales into California through a shipment hold and a sales hold, as well as a voluntary self-disclosure of the issue to ARB.
10. Krone NA manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into California, in 2010 and 2011, the following four (4) agricultural harvesters with off-road compression-ignition engines that were not certified pursuant to California Code of Regulations, Title 13, section 2420(a)(3):

Equipment Make/Model	Model Year	Equipment Serial Number	Engine Make/Model	Engine Serial Number	Engine Family
Krone Big X 1100	2011	813897	MAN D2862LE124	71227298062737	MNBL24.2OR1
Krone Big X 1100	2011	813900	MAN D2862LE124	71227418012737	MNBL24.2OR1
Krone Big X 700	2010	801105	MAN D2868LE122	64227778112784	MNBL24.2OR1
Krone Big X 700	2011	814328	MAN D2868LE122	64227618012756	MNBL24.2OR1

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11. The manufacture for sale, offer for sale, sale, introduction or delivery for introduction into commerce, or importation into California of the four subject units above by Krone NA were unlawful and in violation of Health and Safety Code section 43152 *et. seq.*, Health and Safety Code section 43211, and California Code of Regulations, Title 13, section 2420 *et seq.*
12. Krone NA is a Delaware Corporation headquartered in Memphis, Tennessee, doing business in California.
13. Krone NA, in addition to the voluntary self-disclosure and immediate corrective actions, promptly and fully cooperated with ARB throughout its investigation.
14. Krone NA has no prior enforcement record with ARB.
15. Penalties for the violations described above could be imposed against Krone NA as provided in Health and Safety Code section 43154(a) and 43211.
16. Krone NA admits the facts in recital paragraphs 1 through 13, but denies any liability arising thereunder.
17. Krone NA is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

TERMS AND RELEASE

In settlement of any and all claims that ARB has against Krone NA for the violations alleged above, and in consideration of ARB not filing a legal action as well as the other terms set out below, ARB and Krone NA agree as follows:

1. As a condition of this Agreement, Krone NA shall pay the total sum of twenty thousand dollars (\$20,000). Of this total, fifteen dollars (\$15,000) shall be paid as a penalty by certified check or wire transfer to the **California Air Pollution Control Fund** within five (5) days of execution of this Agreement.
2. As a further condition of this Agreement, Krone NA shall pay an additional amount of five thousand dollars (\$5,000) to the School Bus and Diesel Emission Reduction Supplemental Environmental Project (SEP). Payment shall be made by certified check or wire transfer within five (5) days of execution of this Agreement.

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The signed Agreement and any future mailings or documents required per the terms of this Agreement shall be mailed to:

**Jeremiah Bearden, Air Resources Engineer
Air Resources Board, Enforcement Division
8340 Ferguson Avenue
Sacramento, CA 95828**

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

**California Air Resources Board
Accounting Office
PO Box 1436
Sacramento, CA 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: ARB Case # MSES-13-010**

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

Notification of each wire transfer shall be provided to:

**Jeremiah Bearden
California Air Resources Board
Enforcement Division
Jeremiah.Bearden@arb.ca.gov
(916) 229-0549**

3. Effect of Untimely Payment. 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% per annum on the entire remaining balance from the date initially due shall become immediately due and payable without notice or demand.
4. If the Attorney General files a civil action to enforce this settlement agreement, Krone NA shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

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5. It is agreed that the penalty described in "Terms and Release" paragraph 1 is punitive in nature, rather than compensatory. Furthermore, this penalty is payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that this penalty imposed on Krone NA by ARB arising from the facts described in recital paragraphs 1 through 17 are nondischargeable 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, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.
6. Krone NA shall not manufacture for sale, sell, offer for sale, introduce or deliver for introduction into commerce, or import into California any vehicles or off-road compression-ignition engines in violation of California Health and Safety Code section 43152, California Health and Safety Code section 43211, or California Code of Regulations, title 13, section 2420 *et seq.*
7. This Agreement shall apply to and be binding upon Krone NA and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement. Nothing in this Agreement is intended to create personal liability that does not otherwise apply.
8. Now, therefore, in consideration of the payment by Krone NA to the California Air Pollution Control Fund and the School Bus and Diesel Emission Reduction Supplemental Environmental Project in the amounts specified above, ARB hereby releases Krone NA and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from any and all claims that ARB may have relating to all Subject Parts or that may be based on the allegations described in this Agreement. The undersigned represent that they have the authority to enter this Agreement.
9. This Agreement constitutes the entire agreement and understanding between ARB and Krone NA 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 ARB and Krone NA concerning these claims.
10. 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.
11. Advice of Counsel. 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

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inducement, representation, or advice of any other Party in deciding to enter into this Agreement.

12. 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.
13. Severability. 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 to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.
14. 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.
15. Waiver. 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.
16. 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.

17. SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39617) requires the ARB to provide information on the basis for the penalties it seeks. This required information, which is provided throughout this settlement agreement, is summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43024.

The per unit penalty in this case is a maximum of \$5,000 per unit per strict liability violation under Health and Safety Code section 43154 and 43211. The penalty obtained in this case is approximately \$5,000.00 per unit for 4 units.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

ARB alleges that the penalty provision being applied in this case, Health and Safety Code section 43154, is appropriate because ARB alleged that Krone NA manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into California off-road compression-ignition engines that were not certified pursuant to California Code of Regulations, Title 13, section 2420 et. seq.

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 noncertified engines. However, since the off-road compression-ignition engines were not certified for sale in California, all emissions attributable to them are illegal and excess as well.

18. Krone NA acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health and Safety Code section 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
19. Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar case negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain period of time, considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.
20. The penalty in this case was based in part on confidential business information provided by Krone NA that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and Krone NA that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against Krone NA, the desire to avoid the uncertainty, burden and

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expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Krone NA may have secured from its alleged actions.

California Air Resources Board

By:  For

Name: Ellen M. Peter

Title: Chief Counsel

Date: 11/10/15

Krone NA, Inc.

By: 

Name: Tommy Jones

Title: President/Chief Executive Officer

Date: 10/5/15