

## SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and FPT Industrial, Secretariat Product Engineering (hereinafter "FPT"), Via Puglia 15, Entrance F, 10156 Torino, Italy.

### I. RECITALS

- (1) 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.
- (2) California Health and Safety Code section 43016 states, "Any 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 that is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed five hundred (\$500) per vehicle, portable fuel container, spout, engine, or other unit subject to regulation under this part, as these terms are defined in this division or state board regulations. Any penalty collected pursuant to this section shall be payable to the State Treasurer for deposit in the Air Pollution Control Fund."
- (3) Without first obtaining an ARB Executive Order (EO) FPT: (a) sold three non-California certified Model Year 2010 CASE Steiger 385 tractors; and (b) offered for sale an additional six units. The total number of tractors involved is nine (9). These violations were documented on March 18, March 22, and May 10, 2010 by the Ventura County Air Pollution Control District's Off-Road Equipment Replacement Program.
- (4) FPT stipulates to the facts and the violations of Title 13, California Code of Regulations Section 2423.

### II. TERMS AND CONDITIONS

In consideration of the ARB not filing a legal action for the violations referred to above, the ARB and FPT agree as follows.

- (1) Upon execution of this Agreement, the sum of three thousand dollars (\$3,000) shall be paid on behalf of FPT, to the California Air Pollution Control Fund. The payment shall be mailed to:

Lisa Yacoubian  
Air Resources Board  
Enforcement Division  
9528 Telstar Avenue  
El Monte, CA 91731

- (2) FPT represents that it understands the legal requirements applicable to selling engines in California and agrees that it will not introduce products to commerce unless ARB certification has first been obtained. FPT agrees that it will not acquire, offer for sale or sell new, non-California certified engines for use or registration in California and FPT promises that any engines in its possession not certified to California emission standards will be clearly marked: "Not for Sale or Use in California".
- (3) Now therefore, in consideration of the payments on behalf of FPT to the California Air Pollution Control Fund, the ARB hereby releases FPT and their principals, officers, agents, predecessors and successors from any and all claims for past violations of 13 California Code of Regulations section 2423 the ARB may have based on the events described in paragraph (5) of the Recitals. The undersigned represent that they have the authority to enter this Agreement
- (4) This Agreement constitutes the entire agreement and understanding between ARB and FPT 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 FPT concerning these claims.
- (5) 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.
- (6) 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 inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
- (7) 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.

- (8) 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.
- (9) 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.
- (10) Captions. The captions by which the sections and subsections of this Agreement are identified are for convenience only, and shall have no effect whatsoever upon their interpretation.
- (11) This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.
- (12) 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.
- (13) SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks. This 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 §43024.

The per unit penalty in this case is a maximum of \$500.00 per unit per strict liability violation. The penalty obtained in this case is approximately \$333 per unit for approximately 9 units. The penalty was discounted because these were unintentional, first-time violations and because FPT cooperated fully with the investigation.

**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 §43016 because FPT put engines into commerce in California in violation of Title 13, California Code of Regulations Section 2423.


**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 vehicles were not certified for sale in California, emissions attributable to them are illegal. It is not practicable to quantify these emissions, however, because the information necessary to do so is not available.

- (14) FPT 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 HSC 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.
- (15) 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 cases negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty the complete circumstances of this case. The penalty was discounted in this matter based on the fact that this was a first time violation and the violator made unusually diligent efforts to comply and to cooperate with the investigation. Penalties in future cases might be smaller or larger on a per unit basis.
- (16) The penalty in this case was based on confidential settlement communications between ARB and FPT 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 FPT, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that FPT may have secured from its actions.

**California Air Resources Board**

By:   
Name: James R. Ryden  
Title: Chief  
Date: 8/16/11

By:   
Name: Aldo CELASCO  
Title: Emission Certification Manager  
Date: 08/05/2011