

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 Thompco Inc., (hereinafter "TMCO") 210 West Seventh Street, Oxnard, CA 92683.

I. RECITALS

- (1) Health and Safety Code (H&SC), section 39650-39675 mandates the reduction of the emission of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the Air Resources Board (ARB) identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use Off-road diesel vehicles (off-road vehicles) are powered by diesel fueled engines that emit toxic particulate matter. Off-road vehicles are controlled under section 2449 within chapter 9, article 4.8, Title 13 of the California Code of Regulations (CCR).
- (2) CCR, Title 13, section 2449 (b) states the regulation applies to any person, business, or government agency who owns or operates within California any diesel fueled or alternative diesel fueled off-road compression ignition vehicle engine with maximum power of 25 horsepower (hp) or greater that is used in a two-engine crane or to provide motive power in a workover rig or to provide motive power in any other motor vehicle that (1) cannot be registered and driven safely on-road or was not designed to be driven on-road, and (2) is not an implement of husbandry or recreational off-highway vehicle.
- (3) CCR, Title 13, section 2449 (g) sets forth the requirements for reporting all vehicles with engines subject to the regulation.
- (4) CCR, Title 13, section 2449 (f) (1) sets forth the requirements for labeling all vehicles with engines subject to the regulation with an ARB-issued equipment identification number (EIN).
- (5) The ARB, has documented that TMCO failed to report and label equipment prior to the August 1, 2009 deadline.
- (6) Failure to report and label equipment is a violation of state law resulting in penalties. Health and Safety Code, section 39674, authorize civil or administrative penalties not to exceed one thousand dollars (\$1,000) or ten thousand dollars (\$10,000) for each day that the violation occurs.

SETTLEMENT AGREEMENT AND RELEASE

ARB and TMCO

Page 2 of 5

- (7) In order to resolve these alleged violations, TMCO has taken, or agreed to take, the actions enumerated below under "TERMS AND RELEASE". Further, the ARB accepts this Agreement in termination and settlement of this matter.
- (8) 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 violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, the ARB and TMCO agree as follows:

II. **TERMS AND RELEASE**

In consideration of the ARB not filing a legal action against TMCO for the alleged violations referred to above, the ARB and TMCO agree as follows:

- (1) Upon execution of this Agreement, the sum of one thousand dollars (\$1,000.00) shall be paid on behalf of TMCO as follows:
- **\$750.00 to the California Air Pollution Control Fund**
 - **\$250.00 to the Peralta Community College District**

The payments must be made in the form of checks. The checks with the signed settlement agreement shall be sent to:

Mr. Christopher Patno, Air Resources Engineer
Air Resources Board, Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, CA 91731

- (2) If the Attorney General files a civil action to enforce this settlement agreement, the prevailing party shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (3) TMCO shall not violate Title 13, CCR sections 2449 et seq., 2180 et seq., 2190 et seq. and 2485.
- (4) No on-road or off-road vehicle or engine subject to the applicable regulation may idle for more than 5 consecutive minutes. The only time a vehicle can idle in excess of 5 consecutive minutes is if one of the exemptions listed in CCR, Title 13, section 2449(d)(3) or 2485 are in effect.

SETTLEMENT AGREEMENT AND RELEASE
ARB and TMCO
Page 3 of 5

- (5) This Agreement constitutes the entire agreement and understanding between ARB and TMCO concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and TMCO concerning the subject matter hereof.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) 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 (*see Health and Safety Code section 39619.7*). 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.

Off-Road Violations

The per unit or per vehicle penalty for the Off-Road violations involved in this case is a maximum of \$1,000 per vehicle per day for strict liability violations or \$10,000 per vehicle per day for negligent or intentional violations. The penalty obtained for the TMCO's violations involved in this case is \$1,000 or \$500 per vehicle for 2 vehicles for an unspecified number of days. This penalty was calculated by considering all factors

SETTLEMENT AGREEMENT AND RELEASE

ARB and TMCO

Page 4 of 5

specified in H&SC section 43024. This penalty represents the minimum amount required under H&SC 39674 and the fact that this is an innocent, first time violation and that TMCO has 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.

Off-Road Violations

The penalty provision being applied for the In-Use Off-Road Diesel Regulation (Title 13, CCR, section 2449 et seq.) violations (including labeling) is H&SC section 39674 because the Off-Road rule is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in H&SC section 39660, et seq. and because TMCO failed to register and label 2 vehicles as required by the In-Use Off-Road Diesel Regulation.

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 currently prohibit emissions for Off-road vehicles.

- (11) TMCO acknowledges that ARB has complied with SB 1402 in prosecuting or 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, 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.
- (12) 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, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.
- (13) The penalty in this case was based in part on confidential business information provided by TMCO 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 TMCO that

SETTLEMENT AGREEMENT AND RELEASE

ARB and TMCO

Page 5 of 5

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 TMCO, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that TMCO may have secured from its actions.

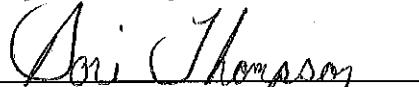
- (14) Now therefore, in consideration of the payment by TMCO, in the amount of one thousand dollars (\$1,000.00), ARB hereby releases TMCO and its principals, officers, agents, predecessors and successors from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs (1) – (5) above. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: 

Name: James Ryden
Title: Chief, Enforcement Division
Date: 12/16/11

Thompco Incorporated

By: 

Name: Dori Thompson
Title: President
Date: 12/9/11