

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 Perkins Engines Company Limited (Perkins), with its principal location at Eastfield, Frank Perkins Way, Peterborough PE1 5FQ, United Kingdom (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 "*Off-Road Compression-Ignition Engines and Equipment*" Regulation (Cal. Code Regs., tit. 13, §§ 2420-2427) (Off-Road CI 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 off-road compression-ignition (CI) engines that are manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into California are required to certify these engines and obtain an Executive Order (EO) from CARB. The engines must meet the emission standards (either through a direct standard or through a family engine level or "FEL" under the averaging, banking, and trading or "ABT" program), and the manufacturer must also properly label, provide for defects investigation and reporting, and conduct production engine testing based on the model year (MY) and maximum engine power. Manufacturers may produce equipment and engines that are exempt from meeting current MY emission standards for a portion of their California-directed production volume using flexible allowances but must meet the notification, reporting, and labeling requirements. (Cal. Code Regs., tit. 13, §§ 2420-2427.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to forty-five thousand five hundred sixty-three dollars (\$45,563.00 USD) for each strict liability violation of the Off-Road CI Regulation, respectively, for each noncompliant equipment or engine. (Health & Saf. Code, § 43016; Cal. Code Regs., tit. 13, § 2420 et seq.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Perkins was organized and incorporated under the laws of the United Kingdom and conducted business in the State of California.

- (6) Allegations. This Settlement Agreement resolves the self-disclosures made by IAT and Perkins to CARB on October 15, 2019, and subsequently updated through regular meetings with CARB. CARB alleges that IHI Agri-Tech Corporation (IAT), while in negotiations with Perkins for the sale of the IAT engine business to Perkins, including a license to the intellectual property rights for those engines, certified, manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into California, model year (MY) 2018 and 2019 new off-road CI engines, engine family _H3XL2.22TD3, that failed to comply with the requirements of the Off-Road CI Regulation by failing to meet the emission standards (Cal. Code Regs., tit. 13, § 2423), resulting in 219 violations. Perkins obtained a license to the intellectual property relating to the MY 2018 and 2019 _H3XL2.22TD3 engines with the right to develop and improve that intellectual property when it purchased the IAT engine business. Once the necessary data was obtained from IAT, Perkins undertook to validate the engineering data provided by IAT for all transitioning engine families. This analysis resulted in Perkins' identification of and—pursuant to a Power of Attorney in which IAT generally authorized Perkins to work with regulators—disclosure of the issue. CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against Perkins, as the owner of the IAT engine business, its liabilities, and its intellectual property for the relevant MYs, for each and every engine involved in the violations.
- (7) Acknowledgment. Perkins agrees that CARB would be able to prove 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, Perkins 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 Perkins for the alleged violations referred to above in the Legal Background and Case Background, and Perkin's agreement to complete all terms and conditions set forth below, CARB and Perkins agree as follows:

- (9) Settlement Amount. Perkins shall pay a civil penalty of two hundred five thousand three hundred and thirteen dollars (\$205,313.00 USD), and agrees to fund a Supplemental Environmental Project (SEP) entitled To Reduce Contaminated Waste & Emissions Throughout Bay View Hunters Point Community in the amount

of two hundred five thousand three hundred and twelve dollars (\$205,312.00 USD), consistent with CARB's SEP Policy, for a total settlement of four hundred ten thousand six hundred twenty-five dollars (\$410,625.00 USD). Perkins shall make all payments within thirty (30) calendar days from the Notification Date.

- (10) Notification Date. The date upon which CARB notifies Perkins according to Paragraph 17 (Notices), that the Settlement Agreement is fully executed or when CARB sends the fully executed Settlement Agreement to Perkins.
- (11) Civil Penalty Payment Method. Perkins 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. Perkins is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the 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 Perkins in accordance with Paragraph 17 (Notices).
- (12) SEP Payment Method(s). Perkins shall fund the SEP by wire transfer or check, payable to the SEP implementer/recipient, First Generation Environmental Health & Economic Development using instructions provided separately by CARB in a SEP Payment Transmittal Form. Perkins is responsible for all payment processing fees. Payments shall be accompanied by the SEP Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to Perkins in accordance with Paragraph 17 (Notices).
- (13) Prohibition Against Financial Benefit. Perkins has agreed that by funding the SEP entitled To Reduce Contaminated Waste & Emissions Throughout Bay View Hunters Point Community, Perkins will not receive any direct or indirect financial benefit, and that whenever Perkins publicizes or refers to the SEP or the results of the SEP, Perkins 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 Recipient/Administrator 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 implementer, 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 the Air Pollution Control Fund. Accordingly, Perkins assigns any and all rights against the SEP implementer to CARB.
- (15) Other Relief. Perkins shall forfeit 6,161.7 PM credits as a result of the noncompliant off-road CI engines. Perkins will submit to the CARB-eFILE system

within 30 calendar days from the date CARB notifies Perkins of the full execution of the Settlement Agreement a revised final Averaging, Banking, and Trading Report which will include a line item forfeiting credits per reasons of the settlement.

- (16) Documents. Perkins shall promptly email or mail the signed and dated Settlement Agreement to the CARB address or email in Paragraph 17 (Notices).
- (17) 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, Consumer Products Enforcement Branch / Engine and
Parts Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to Perkins:

Perkins Engines Company Limited
Eastfield, Frank Perkins Way
Peterborough PE1 5FQ, United Kingdom
Halloran_James_P@cat.com

As to Perkins' Legal Representation:

Gilbert S. Keteltas
BakerHostetler
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
GKeteltas@bakerlaw.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.

- (18) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, and is successful in that action, Perkins shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.

- (19) Repeat Violations. Perkins agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (20) 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 9 pages and 38 numbered paragraphs.
- (21) Binding Effect. This Settlement Agreement binds Perkins, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (22) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (23) 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.
- (24) 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.
- (25) 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.
- (26) 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.
- (27) 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.
- (28) 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.

- (29) 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.
- (30) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (31) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (32) Release. In consideration of full payment of the civil penalty and SEP payment, and all other undertakings above, CARB hereby releases Perkins and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in Paragraph 6 (Allegations) above.
- (33) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (34) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of forty-five thousand five hundred sixty-three dollars (\$45,563.00 USD) per action under Health and Safety Code section 43016, for violations of the Off-Road CI Regulation (Cal. Code Regs., tit. 13, §§ 2420 et seq.) The penalty of \$410,625.00 over an unspecified number of days of violation is for 219 noncompliant off-road CI engines. The per unit penalty in this case is approximately \$1,875.00 per noncompliant unit.

- (35) Emissions. The provisions cited in Paragraph 6 (Allegations) above prohibit emissions above a specified level. Without information on usage and emission rates, it is not practicable to quantify the excess emissions.
- (36) 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. Mitigating factors in this case include, but are not limited to, the following specific examples:
- a) Perkins identified the issue as a result of its own due diligence;
 - b) Perkins voluntarily disclosed the issue to CARB;
 - c) Perkins fully cooperated with CARB's investigation; and
 - d) Perkins' compliance history with CARB.
- (37) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Perkins or confidential settlement communications.
- (38) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil 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 Perkins 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 Perkins with respect to:

- (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Perkins 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, Perkins 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 Perkins 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 Perkins, 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. Perkins reserves all defenses and all rights and remedies, legal and equitable, available to it in any action by a non-party pertaining to the Agreement, or any other federal, state or local statute, rule or regulation.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Perkins is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Perkins' 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

Perkins' 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: March 14, 2024

Perkins Engine Company Limited

Signature: /S/

Name: Jonathan Horn

Title: Senior Director Finance

Date: March 7, 2024