

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 MAN Truck and Bus AG (hereinafter "MAN"), Dachauer Strasse 667 D-80995 Munich, Germany.

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. 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. 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 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. At the time of the alleged violations, Health and Safety Code section 43154(a) stated, "Any person who violates any provision of this article shall be liable for a civil penalty not exceed five thousand dollars (\$5,000) per vehicle."

6. In 2011, 2012 and 2013, MAN manufactured for sale new off-road compression-ignition engines that were incorporated into agricultural harvesters manufactured and distributed by CLAAS. Fourteen of those engines were subsequently imported by CLAAS into California without being covered by an ARB Executive Order (EO) issued pursuant to Chapter 9, Article 4 Section 2420 *et seq.* These engines are summarized as follows:

Manufacturer Serial Number	Motor number	Date of birth	Motor Family
49403003	71230078063007	9/5/2011	MNBL24.2OR1
49403006	71230088053007	9/6/2011	MNBL24.2OR1
49403023	71230418023025	10/12/2011	MNBL24.2OR1
49403029	71230358043025	10/5/2011	MNBL24.2OR1
49403068	71230488113025	10/20/2011	MNBL24.2OR1
49403153	64230688063050	11/14/2011	MNBL24.2OR1
49403161	64230688153059	11/15/2011	MNBL24.2OR1
49403646	71232108013224	4/26/2012	MNBL24.2OR1
49403820	71232418083242	6/4/2012	MNBL24.2OR1
49403985	71233348073338	9/17/2012	MNBL24.2OR1
49403986	71233418033330	9/25/2012	MNBL24.2OR1
49403987	71234668013460	2/18/2013	MNBL24.2OR1
49403989	71233378063338	9/20/2012	MNBL24.2OR1
49404105	64233598113356	10/16/2012	MNBL24.2OR1

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7. The importation and sale by CLAAS in California of fourteen MAN-manufactured engines not covered by an ARB EO were unlawful and in violation of Division 26, Chapter 2, Article 1.5 (*Prohibited Transactions*) of the Health and Safety Code section 43150 *et seq.*, and California Code of Regulations, Title 13, section 2420 *et seq.*
8. MAN promptly and fully cooperated with ARB throughout its investigation.
9. MAN has no prior enforcement record with ARB.
10. MAN admits the facts in recital paragraphs 1 through 9, but denies any liability arising thereunder.
11. In order to resolve these alleged violations, MAN has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, ARB accepts this Agreement in settlement 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 consideration of ARB not filing a legal action against MAN for the alleged violations referred to above, and MAN's payment of the penalties set forth in Section 1 below, ARB and MAN agree as follows:

- (1) As a condition of this Settlement Agreement, MAN shall pay as a penalty the total sum of fifty two thousand five hundred dollars (\$52,500.00) to the California Air Pollution Control Fund, within five (5) business days of execution of this Agreement.

Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Agreement to:

**Gregory Honzay/ Air Pollution Specialist
Air Resources Board, Enforcement Division
8340 Ferguson Avenue
Sacramento, CA 95828**

Please submit the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

**California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812-1436**

- (2) MAN shall not manufacture for sale in or distribution to California any new off-road compression-ignition engine in violation of California Code of Regulations, title 13, section 2420 *et seq.* and Health and Safety Code section 43150 *et seq.*
- (3) This Agreement shall apply to and be binding upon MAN, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (4) This Agreement constitutes the entire agreement and understanding between ARB and MAN concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and MAN concerning the subject matter hereof.
- (5) 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.
- (6) 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.
- (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) 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.
- (9) This Agreement may be executed in multiple counterparts and on facsimile copies with the same force and effect as an executed original of the same.

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SB 1402 Statement

(10) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires 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 HSC section 43024.

The per unit penalty for sales of non-compliant engines in this case is a maximum of \$5,000 per unit per strict liability violation. The penalty obtained in this case is \$3,750 per unit for 14 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 MAN-manufactured new off-road compression-ignition engines that were not certified pursuant to California Code of Regulations, title 13, section 2420 *et seq.* and Health and Safety Code section 43150 *et seq.* were included in equipment allegedly sold, and/or offered for sale, and/or advertised, and/or introduced or delivered for introduction into commerce, and/or imported in to California.

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 uncertified engines. However, since the engines were not certified for sale in California, emissions attributable to them are illegal and in excess.

(11) MAN acknowledges that ARB has complied with Senate Bill 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

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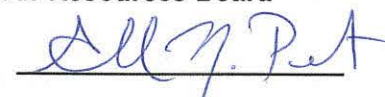
considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

(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 was based on confidential settlement communications between ARB and MAN that ARB does not retain in the ordinary course of business. The penalty is the product of an arm's length negotiation between ARB and MAN and reflects ARB's assessment of the relative strength of its case against MAN, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that MAN may have secured from its actions.

(14) Now therefore, in consideration of the payment on behalf of MAN to the Air Pollution Control Fund, ARB hereby releases MAN and their principals, officers, agents, predecessors and successors from any and all claims, ARB may have or have in the future based on the circumstances described in paragraph (1) through (11) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement

California Air Resources Board

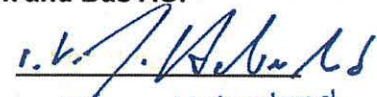
Signature: 

Print Name: Ellen M. Peter

Title: Chief Counsel

Date: 6/19/2017

MAN Truck and Bus AG:

Signature: 

Print Name: Jürgen Haberland

Title: Head of Off-Road

Date: June 1st 2017


Peter Lehmeier