

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 MAHINDRA USA, INC. (hereinafter "MAHINDRA") with its principal place of business at 9020 Jackrabbit Road, Houston, Texas 77095 collectively, "The Parties."

RECITALS

1. California Code of Regulations, title 13, section 2420(a)(3) provides "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."
6. 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."
7. 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."
8. 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."

9. 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."
10. In 2012, MAHINDRA manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into California twenty-seven model year 2012 off-road compression-ignition engines (engine families CMMLL01.8C35, CMMLL02.7M30, CMMLL01.8C40, CMMLL02.7M35, CMMLL02.5NEF, CMMLL02.5C49, CMMLL02.5N52, CMMLL02.5N59, CMMLL02.5N62, CMMLL02.5N64) that were not certified by ARB pursuant to California Code of Regulations, title 13, section 2420(a)(3).
11. The advertisements, offers for sale, and sales of the subject units, 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. MAHINDRA self-disclosed the 2012 model year violations.
13. MAHINDRA promptly and fully cooperated with ARB throughout its investigation.
14. MAHINDRA has no prior enforcement record with ARB.
15. ARB alleges that if the facts described in recital paragraphs 1-11 were proven, civil penalties could be imposed against MAHINDRA as provided in Health and Safety Code section 43154.
16. MAHINDRA admits the facts described in recital paragraphs 1-11, but denies any liability arising therefrom.
17. MAHINDRA 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 consideration of ARB not filing a legal action against MAHINDRA for the violations alleged above, and in consideration of the other terms set out below, ARB and MAHINDRA agree as follows:

- (1) As a condition of this Settlement Agreement, MAHINDRA shall pay the total sum of one hundred twenty-seven thousand dollars (\$127,000.00) subject to the following terms. Seventy five percent of the penalty amount (\$95,250.00) shall be paid to the Air Pollution Control Fund within 30 days of the effective date of this agreement. In addition, twenty five (25%) percent of the penalty amount (\$31,750.00) will be used towards a Supplemental Environmental Project (SEP) pursuant to the Cal/EPA Guidance on Supplemental Environmental Projects. The SEP will be determined by mutual agreement between MAHINDRA and the ARB within 60 days of the effective date of this agreement and if no agreement is reached by then the \$31,750 will be paid to the Air Pollution Control Fund. Payments to the Air Pollution Control Fund shall be made by check payable to the California Air Pollution Control Fund and addressed along with the signed Agreement to:

Gretchen Ratliff, Air Pollution Specialist
Air Resources Board
9480 Telstar Avenue, Suite 4
El Monte, California 91731

2. MAHINDRA shall not sell, offer for sale, or advertise in California any new off-road compression-ignition engine in violation of California Code of Regulations, title 13, section 2420 *et seq.*
3. This Agreement shall apply to and be binding upon MAHINDRA and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and predecessors and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
4. Now, therefore, in consideration of the payment by MAHINDRA to the California Air Pollution Control Fund in the amount specified above, ARB hereby releases MAHINDRA and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from any and all claims for past violations of California Code of Regulations, title 13, section 2420 *et seq.* the ARB may have based on the events described in recital paragraphs 1-11. The undersigned represent that they have the authority to enter this Agreement.
5. This Agreement constitutes the entire agreement and understanding between ARB and MAHINDRA 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 MAHINDRA concerning these claims.
6. 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.

7. 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.
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. 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.
10. 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.
11. 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.
12. 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.
13. 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.

14. 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. The penalty obtained in this case is approximately \$4,703.70 per unit for approximately 27 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 MAHINDRA allegedly sold, and/or offered for sale, and/or advertised, and/or introduced or delivered for introduction into commerce, and/or imported into California the subject non-California certified new 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 uncertified engines. However, since the engines were not certified for sale in California, emissions attributable to them are illegal and excess.

15. MAHINDRA 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.
16. 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.
17. The penalty in this case was based in part on confidential business information provided by MAHINDRA 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 MAHINDRA 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 MAHINDRA, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that MAHINDRA may have secured from its alleged actions.

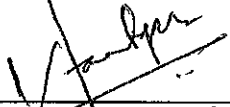
18. This Settlement Agreement by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD and MAHINDRA ENGINE NORTH AMERICA, INC. consists of 6 pages, 17 recitals, and 18 terms and release.

The undersigned represent that they have the authority to enter this Agreement.

California Air Resources Board

Mahindra USA, Inc.

By: 
Name: Richard W. Corey
Title: Executive Officer
Date: 3/14/2014

By: 
Name: MANI IYER
Title: PRESIDENT
Date: 02/14/2014