

## 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 Paceco Corporation (Paceco), 25503 Whitesell Street, Hayward, California 94545-3614.

### I. RECITALS

- (1) California Code of Regulations, Title 13, Sections 2420(a)(1) and (a)(3) provide that 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. 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 there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty of not to exceed five hundred dollars (\$500) per vehicle. Any penalty collected pursuant to this section shall be payable to the State Treasurer for deposit in the Air Pollution Control Fund."
- (3) During the period of September 2010 through March 2011, ARB discovered that Paceco acquired, was offering for sale and selling non-California certified engines used in the Rubber Tire Gantry (RTG) cranes in various ports throughout California in violation of Title 13, Sections 2420 and 2423 of the California Code of Regulations. Prior to using them, Paceco failed to apply for and obtain engine certification in California.

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- (4) Paceco stipulates to the facts and the violations of California in violation of Title 13, Sections 2420 and 2423 of the California Code of Regulations as described above.

### II. TERMS AND CONDITIONS

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

- (1) Paceco shall pay the sum of Nine Thousand dollars (\$9,000), to the California Air Pollution Control Fund. The full payment is due immediately and shall be payable to the California Air Pollution Control Fund and addressed to:

Martina Diaz  
Air Resources Board  
Enforcement Division  
Mobile Source Enforcement Section  
9528 Telstar Avenue  
El Monte, California 91731

- (2) Paceco represents that it understands the legal requirements applicable to marketing, offering for sale and selling non-California certified engines and agrees to cease marketing, offering for sale and selling non-certified engines in California until a valid certification has been obtained from the ARB.
- (3) Now therefore, in consideration of the payment by Paceco in the amount of Nine Thousand dollars (\$9,000) to the California Air Pollution Control Fund, ARB hereby releases Paceco and their principals, officers, agents, and successors from any and all claims ARB may have based upon the events described in recital paragraphs (3) and (4) hereinabove, including claims under Title 13, Sections 2420 and 2423 of the California Code of Regulations. The undersigned represents that they have the authority to enter into this Agreement.

- (1) **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.**

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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 vehicle penalty in this case is a maximum of \$500 per unit per strict liability violation. The penalty obtained in this case is approximately \$500 per vehicle for eighteen engines for a total of \$9,000.

**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 section 43016 because Paceco offered for sale and sold non-certified engines in California in violation of Title 13, section 2423 of California Code of Regulations. Since there is no penalty specifically provided for such violations, Health and Safety Code section 43016 applies.

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

- (2) Paceco 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, 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.
- (3) 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.

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- (4) The penalty was also based on confidential business information provided by Paceco that is not retained by ARB in the ordinary course of business. The penalty was also based on confidential settlement communications between ARB and Paceco that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and Paceco and reflects ARB's assessment of the relative strength of its case against Paceco, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Paceco may have secured from its actions.
- (5) Paceco represents that it understands the legal requirements applicable to using non-certified engines in California.

**California Air Resources Board**

**Paceco corporation**

By:   
Name: James Ryden  
Title: Division Chief  
Date: 7/26/11

By:   
Name: Sun Huang  
Title: Chief Engineer  
Date: 7/14/2011

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