

This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB) 1001 I Street, Sacramento, California 95814, and SIERRA PACIFIC INDUSTRIES, INC. ("SPI"), 19974 Riverside Avenue, Redding, California 96049.

RECITALS

1. The Global Warming Solutions Act of 2006 authorized ARB to adopt regulations requiring the reporting and verification of greenhouse gas emissions. (Health & Saf. Code §38530.) Pursuant to that authority, ARB adopted the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR), California Code of Regulations (CCR), title 17, §95100 et seq.
2. The MRR requires most reporting entities to submit, by April 10 of each year, an emissions data report containing emissions and product data that is certified to be complete and accurate within stated standards. (CCR, tit. 17, §95103.)
3. Where a report required under the MRR is late or does not meet the regulation's standards for accuracy, completeness, or third-party verification, the MRR provides that each day a report remains unsubmitted, incomplete or inaccurate constitutes a separate violation. (CCR, tit. 17, §95107.)
4. California Health & Safety Code sections 38580 and 42402 provide that one who violates the MRR or related regulations is strictly liable for a penalty of up to \$10,000 for each violation.
5. ARB contends that for the reporting period 2011 SPI failed to comply with the MRR by failing to submit its emissions report for its Sonora facility on time. As a result, ARB staff contacted the company to facilitate reporting and verification.
6. In reaching this settlement, ARB considered a variety of circumstances, including nature, magnitude, and duration of the violation, any harm to the environment or the regulatory program, efforts the company took to correct the violation, and the financial burden to the company.
7. In this matter, there were a number of mitigating factors, including that this is the first time ARB has noted the company as being in violation, SPI has timely submitted 24 out of 25 required MRR reports during 2009-2012, SPI received positive verifications for all 24 of those reports, SPI is a biomass generating plant that does not participate in the Cap-and-Trade program, and does not report under federal regulations, the company's explanation indicates an innocent error, SPI has agreed to conduct an MRR compliance audit at all of its operating California facilities, and the company has agreed to submit a GHG monitoring plan to ARB, although not so required by regulation, to demonstrate that reporting will be timely and complete in future reporting years.
8. In order to resolve these alleged violations, SPI has taken, or agreed to take, the actions enumerated below. Further, ARB accepts this Agreement in termination and settlement of this matter.

9. 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, ARB and SPI agree as follows.

TERMS

10. SPI shall pay a penalty of \$40,000. The payments shall be made by wire transfer within 30 days of SPI signing this agreement, as follows:

Bank of America Sacramento Main
State of California Treasurer
Interbranch to 0148
555 Capitol Mall, Suite 765
Sacramento, CA 95814
USA

Attn: Marilyn Goodrich
(916) 321-4803

State Account Number: 01482-80005

Routing Number: 0260-0959-3

FEIN: 68-0288069

Beneficiary: State of California- Air Resources Board
Contact: Yogeeta Sharma
Administrative Services Division, Fiscal Branch
California Air Resources
Board (916) 322-8215
ysharma@arb.ca.gov

11. It is further agreed that the penalties described in the prior paragraph are punitive in nature, rather than compensatory, are intended to deter and punish violations of the MRR, and are payable to a governmental unit. Therefore, it is agreed that these penalties are non-dischargeable under 11 United States Code § 523 (a)(7).

12. Within 60 days of executing this Agreement, SPI shall submit to ARB a Greenhouse Gas Monitoring Plan that addresses any omissions and errors in the gathering and reporting of information in connection with reporting emissions from the year 2011.

13. Within 60 days of executing this Agreement, SPI shall conduct an MRR compliance audit at all of its operating California facilities. Within 90 days of executing this Agreement, SPI shall submit to ARB a report summarizing that audit.

14. This Agreement shall apply to and be binding upon SPI, 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.

15. This Agreement constitutes the entire agreement and understanding between ARB and SPI concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and SPI concerning the subject matter hereof.

16. 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.

17. 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.

18. 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.

19. Health & Safety Code section 39619.7 requires ARB to explain the manner in which the penalty was determined, the law on which it is based, and whether that law prohibits emissions at a specified level. ARB represents that in investigating, prosecuting and settling this case, ARB has considered all relevant facts, including those listed at Health & Safety Code section 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed, which provision does not prohibit the emission of pollutants at a specified level. That information, some of which is also elsewhere in this settlement agreement, is summarized here.

The manner in which the penalty was determined. Penalties must be set at levels sufficient to deter violations. The penalties in this matter were determined based on all relevant circumstances, including the unique circumstances of this case, giving consideration to the eight factors specified in Health & Safety Code section 42403. Consideration was given to the reporting entity's size and complexity, the extent to which the monitoring and reporting deviated from MRR requirements, the cause of any errors and omissions, the magnitude of any errors, and whether emissions were over reported or under reported. Those circumstances were considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, penalties sought in other cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger.

In this matter the penalty was discounted based on the fact that the emissions related to biomass energy generation that is not covered by the Cap-and-Trade Regulation, the company responded promptly when notified to report, the company did not benefit from delaying its report, circumstances suggest that the reporting error may have resulted from a misunderstanding, the company made diligent efforts to comply and to cooperate with ARB's investigation, the company has timely submitted 24 out of 25 required MRR

reports during 2009-2012, the company received positive verifications for all 24 of those reports, and the company has agreed to conduct an MRR compliance audit at all of its operating California facilities.

The legal provisions under which the penalty was assessed. The penalty is based on Health & Safety Code section 42402 and CCR, title 17, section 95107, the provisions intended to govern MRR violations.

Whether the governing provisions prohibit emissions at a specified level. The MRR does not prohibit emissions above a stated level, but Health & Safety Code section 38580(b)(2) specifies that violations of any regulation under the Global Warming Solutions Act of 2006 shall be deemed to result in an emission for purposes of the governing penalty statutes.

20. The penalty was based on confidential settlement communications between ARB and SPI. The penalty is the product of an arms length negotiation between ARB and SPI.

21. In consideration of the penalty payment and the undertakings in paragraphs 12 and 13, above, ARB hereby releases SPI and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations from any claims the ARB may have based on the circumstances described in paragraph 5, above.

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

California Air Resources Board

By: Ellen M. Peter
Ellen M. Peter
Chief Counsel

Date: 10/10/2013

Sierra Pacific Industries, Inc.

By: George Emmerson
Name: George Emmerson
Title: President

Date: 9/24/2013