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 TORO ENGINEERING, INC. (hereinafter "Toro"), 628 D Street Suite A, Marysville, CA 95901.

I. RECITALS

(1) California Health and Safety Code (HSC) section 44011.6 established the Heavy Duty Vehicle Inspection Program (HDVIP). It authorizes ARB to inspect on-road heavy-duty vehicles for excessive smoke emissions and engine tampering and to issue citations, accordingly. The program also requires the vehicle owner to repair its engines that exceed the prescribed ARB smoke opacity standards, perform a post-repair opacity test, and submit proof of repairs and any assessed penalties under the Regulations of the Heavy-Duty Smoke Inspection Program, chapter 3.5, sections 2180-2188, title 13 California Code of Regulations (CCR).

(2) HSC section 43701 provides that ARB shall adopt regulations that require owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excessive smoke emissions.

(3) Title 13 CCR, section 2190 *et seq.* was adopted under the authority of HSC section 43701 and, with limited exceptions, which are not applicable here, apply to all heavy-duty diesel powered vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California.

(4) Title 13 CCR, section 2190 *et seq.* authorize the Periodic Smoke Inspection Program (PSIP) which requires the owners and operators of California based vehicle fleets of two or more heavy duty diesel motor vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California to conduct annual smoke opacity inspections of their vehicles that are four years older than the model year of the vehicle's engine.

(5) Title 13 CCR, section 2192(a) requires inter alia that the owner of the vehicle "[t]est the vehicle for excessive smoke emissions periodically according to the inspection intervals specified in section 2193(a), (b), and (c)", "[m]easure the smoke emissions for each test...", "[r]ecord the smoke test opacity levels and other required test information as specified in section 2194..." and "[k]eep the records specified in section 2194 for two years after the date of inspection."

(6) HSC 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 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 ($500.00) per vehicle."

(7) The ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.

(8) ARB contends Toro failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for years 2010 and 2011 in violation of title 13 CCR, sections 2190 *et seq*.

(9) Health and Safety Code, Section 39650-39675 mandates the reduction of the emission of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, ARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use Off-road diesel vehicles (off-road vehicles) are powered by diesel fueled engines that emit toxic particulate matter. Off-road vehicles are controlled under section 2449 within chapter 9, article 4.8, Title 13 of the California Code of Regulations (CCR).

(10) CCR, Title13, section 2449 (b) states the regulation applies to any person, business, or government agency who owns or operates within California any diesel fueled or alternative diesel fueled off-road compression ignition vehicle engine with maximum power of 25 horsepower (hp) or greater that is used in a two-engine crane or to provide motive power in a workover rig or to provide motive power in any other motor vehicle that (1) cannot be registered and driven safely on-road or was not designed to be driven on-road, and (2) is not an implement of husbandry or recreational off-highway vehicle.

(11) CCR, Title 13, section 2449 (g) sets forth the requirements for reporting all vehicles with engines subject to the regulation.

(12) CCR, Title 13, section 2449 (f) sets forth the requirements for labeling all vehicles with engines subject to the regulation with an ARB-issued equipment identification number (EIN).

(13) The ARB, has documented that Toro failed to report and label equipment prior to the April 1, 2009 deadline.

(14) Failure to report and label equipment is a violation of state law resulting in penalties. Health and Safety Code, Section 39674, authorize civil or administrative penalties not to exceed one thousand dollars ($1,000) or ten thousand dollars ($10,000) for each day that the violation occurs.

(15) In order to resolve these alleged violations, Toro has taken, or agreed to

take, the actions enumerated below under "RELEASE". Further, the ARB accepts this Agreement in termination and settlement of this matter.

(16) 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, the ARB and Toro agree as follows:

II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against Toro for the alleged violations referred to above, and Toro's payment of the penalties set forth in Section 1 below, the ARB and Toro agree as follows:

(1) Upon execution of this Agreement, Toro shall pay a civil penalty of $3,750.00. Payment shall be made in check form as described below, and payments shall be made in four monthly payments beginning on **November 15, 2013**.

SETTLEMENT AGREEMENT AND RELEASE ARB AND **TORO**:

Payment Due Date:		**In the Amount of and Paid to:**
1)	November 15, 2013	**$938.00** paid to **Peralta Colleges Foundation**
2)	December 15, 2013	**$938.00** paid to **Air Pollution Control Fund**
3)	January 15, 2014	**$937.00** paid to **Air Pollution Control Fund**
4)	February 15, 2014	**$937.00** paid to **Air Pollution Control Fund**

Please submit the signed settlement agreement and checks to:

Mr. Eric Bissinger, Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

(2) Effect of Untimely Payment. If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable. In addition, if the Attorney General files a civil action to enforce this settlement agreement, Toro shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(3) It is agreed that if Toro, including its subsidiary or parent company, at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving Toro, its subsidiary, or parent company, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against Toro, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of Toro's, its subsidiary, or parent company's properties, or if any deposit account or other property of Toro, its subsidiary, or parent company be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or Toro, its subsidiary, or parent company takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.

(4) It is further agreed that the penalties described in "Terms and Release", paragraph 1 are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish Toro for violations of state environmental statutes, and these penalties are payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that these penalties imposed on Toro by ARB arising from the facts described in recital paragraphs (1) through (16) are non-dischargeable under 11 United States Code § 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 benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

(5) Toro shall not violate HSC sections 43701 *et seq.*, 44011.6 *et seq.*, and title 13 CCR, sections 2183, 2190 *et seq*, and 2485 *et seq*.

(6) Toro shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (CCDET I) class, (SAE J1667 Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles) as described on the ARB webpage at http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm. This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP, ECL and the HDVIP.

(a) Toro shall have the fleet maintenance manager (or equivalent) and all staff performing opacity tests for compliance with PSIP and the HDVIP attend the CCDET I class. Proof of CCDET I completion shall be provided to ARB within six months of the date of this Agreement and be maintained in each applicable employee's file for the term of his or her employment.

(b) If Toro uses a contractor to perform the annual smoke opacity testing required under the PSIP, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET I course, Toro shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET I course within the past four years. This proof of CCDET I completion shall be provided to ARB with PSIP records as required by this Agreement and be maintained with the annual PSIP records.

(7) Toro shall comply with one or both of the following options to attend the CCDET II class (Diesel Exhaust After Treatment and Maintenance), described on the ARB's webpage http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm. This class is conducted by various California Community Colleges and instructs attendees on California's emission regulations and the proper care and maintenance of diesel exhaust after-treatment systems (DEATS).

(a) Toro shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of DEATS attend the CCDET II class. Proof of CCDET II completion shall be provided to ARB within six months of the date of this Agreement and also be maintained in each applicable employee's file for the term of his or her employment.

(b) In case Toro uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, Toro shall obtain proof that the contractor's staff maintaining the DEATS device(s) completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by Toro to the ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.

(8) Toro shall submit copies of all PSIP compliance records for the years 2013 and 2014 to the ARB by January 31 of the following year. Copies shall be addressed to the attention of Mr. Eric Bissinger at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812. The ARB reserves the right to visit any Toro fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

(9) Toro shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to the ARB within 45 days of this agreement.

(10) Each 1974 or newer diesel powered heavy-duty vehicle in Toro fleet shall comply with the ECL regulation as codified in title 13 CCR, section 2183. Within 45 days of the execution of this Agreement, Toro shall submit the proof of compliance to Mr. Eric Bissinger, Air Pollution Specialist, Air

Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812.

(11) Toro shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in title 13 CCR section 2485, within 45 days of this Agreement.

(12) Toro shall not violate the Truck & Bus regulation as codified in title 13 CCR, section 2025 et seq.

(13) Toro shall not violate. Title 13, CCR sections 2449 et seq., 2180 et seq., 2190 et seq. and 2485.

(14) Toro shall comply with the requirements for off-road equipment set forth in title 13, CCR section 2449.

(15) This Agreement shall apply to and be binding upon Toro, 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.

(16) This Agreement constitutes the entire agreement and understanding between ARB and Toro concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Toro concerning the subject matter hereof.

(17) 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.

(18) 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.

(19) 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.

(20) 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.

(21) 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.

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 sections 42403 and 43024.

PSIP Violations

The per vehicle penalty for the PSIP violations involved in this case is a maximum of $500 per vehicle per violation per year. The penalty obtained for the PSIP violations involved in this case is $1,500 for two vehicle violations for two years, or $375 per vehicle per violation. The penalty was discounted based on the fact that this was a first time violation and the violator made diligent efforts to comply and to cooperate with the investigation.

Off-Road Violations

The per vehicle penalty for the Off-Road violations involved in this case is a maximum of $1,000 per vehicle per day for strict liability violations or $10,000 per vehicle per day for negligent or intentional violations. The penalty obtained for Toro's violations involved in this case is $2,250 or $375 per vehicle for six vehicles for an unspecified number of days. The penalty was discounted based on the fact that this was a first time violation and the violator made diligent efforts to comply and to cooperate with the investigation.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

PSIP Violations

The penalty provision being applied to the PSIP violations is HSC section 43016 because Toro failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for the years 2010 and 2011 in violation of the PSIP regulation in title13 CCR sections 2190 *et seq*, for two vehicles. Since the PSIP regulation was adopted pursuant to authority granted in Part 5 of Division 26 of the HSC and since there is no specific penalty or fine provided for PSIP violations in Part 5, HSC section 43016 is the applicable penalty provision.

Off-Road Violations

The penalty provision being applied for the In-Use Off-Road Diesel Regulation (Title 13, CCR, section 2449 et seq.) violations (including labeling) is Health and Safety Code section 39674 because the Off-Road rule is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in Health and Safety Code Section 39660, et seq. and because Toro Engineering Inc. failed to register and label six vehicles as required by the In-Use Off-Road Diesel Regulation.

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.

PSIP Violations

The PSIP provisions cited above do prohibit emissions above a specified opacity or level of g/hp-hr. However, since the hours of operation of the non-compliant units involved and their individual emission rate are not known, it is not practicable to quantify the excess emissions.

Off-Road Violations

The provisions cited above do not currently prohibit emissions above a specified opacity level of g/hp-hr. Emission standards for the off-road regulation do not go into effect for small fleets until 2019.

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

(23) 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.

(24) The penalty was based on confidential settlement communications between ARB and Toro that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and Toro and reflects ARB's assessment of the relative

strength of its case against Toro, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Toro may have secured from its actions.

(25) Now therefore, in consideration of the payment on behalf of Toro to the Air Pollution control Fund and the Peralta Colleges Foundation, the ARB hereby releases Toro and their principals, officers, agents, predecessors and successors from any and all claims, the ARB may have or have in the future based on the circumstances described in paragraph (1) through (16) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement

California Air Resources Board		**Toro Engineering, Inc.**	
Signature:		Signature:	
Print Name:	James R. Ryden	Print Name:	DANA M RISER
Title:	Chief, Enforcement Division	Title:	owner
Date:	12/2/13	Date:	11/15/2013