

SETTLEMENT AGREEMENT AND RELEASE

John Deere

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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 95812 and John Deere, One John Deere Place, Moline, Illinois 61265.

I. RECITALS

- (1) Title 13, California Code of Regulations (CCR) section 2413(a) states, "The Air Resources Board recognizes that emissions-critical or emissions-related parts must be properly identified and maintained in order for off-highway recreational vehicles, and engines used in such vehicle, to comply with the applicable emission standards. The purpose of this section is to require off-highway recreational vehicle engine manufacturers to attach a label (or labels) on each production vehicle (or engine) in order to provide vehicle owners and service mechanics with information necessary for the proper maintenance of these vehicles and engines in customer use."
- (2) Title 13, CCR section 2413(b) states, "All off-highway recreational vehicles, and engines used in such vehicles, except those certified according to section 2412(f), produced on or after January 1, 1997, for sale, lease, use or introduction into commerce in California, shall comply with these labeling requirements."
- (3) 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 that is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed five hundred (\$500) per vehicle, portable fuel container, spout, engine, or other unit subject to regulation under this part, as these terms are defined in this division or state board regulations. Any penalty collected pursuant to this section shall be payable to the State Treasurer for deposit in the Air Pollution Control Fund."
- (4) On December 21, 2011, John Deere submitted a written notification self-reporting violations of mislabeled Gator vehicle models shipped to California. In the notification John Deere admitted to have over two thousand (2,000) potentially mislabeled Gator vehicles; however the projected number of impacted vehicles at dealers in California is approximately sixteen (16). On May 16, 2012, ARB approved corrected versions of the labels and the re-labeling campaign undertaken nationally by John Deere and approved by U.S. EPA on May 11, 2012. The investigation included reviewing executive orders issued by ARB, sales data and quarterly reports for Model Year 2011

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and Model Year 2012. The outcome of the investigation revealed that John Deere's actions violated Title 13, CCR section 2413.

- (5) John Deere stipulates to the facts and the violations of Title 13, CCR section 2413 as described above.

TERMS AND CONDITIONS

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

- (1) John Deere shall pay the sum of Six Thousand dollars (\$6,000) 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
Vehicle Enforcement Section
Vehicles, Parts and Consumer Products Branch
9528 Telstar Avenue
El Monte, California 91731

- (2) John Deere represents that it understands the legal requirements applicable to these vehicles in California and agrees that it will coordinate a re-labeling campaign with its California dealers to correct the mislabeled vehicles that have been sold to an ultimate purchaser and those potentially mislabeled vehicles sitting at authorized dealerships.
- (3) Now therefore, in consideration of the payment by John Deere in the amount of \$6,000 to the California Air Pollution Control Fund, ARB hereby releases John Deere and their principals, officers, agents, and successors from any and all claims ARB may have based upon the events described in recital paragraphs (4) and (5) hereinabove, including claims under Title, 13, CCR section 2413. The undersigned represent 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 \$375 per vehicle for approximately sixteen vehicles for a total of \$6,000. The penalty was slightly reduced because the violator self-disclosed the violations and cooperated fully with the investigation.

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 John Deere shipped to California mislabeled Gator vehicles in violation of Title 13, CCR, section 2413 as described above.

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.

- (2) John Deere 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.
- (4) The penalty was also based on confidential business information provided by John Deere that is not retained by ARB in the ordinary course of business. The penalty was also based on confidential settlement

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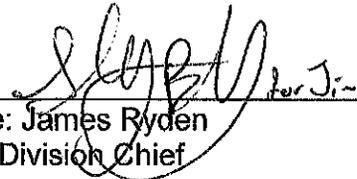
John Deere

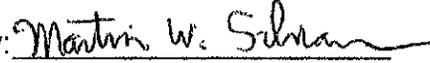
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communications between ARB and John Deere that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and John Deere and reflects ARB's assessment of the relative strength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

- (5) John Deere represents that it understands the legal requirements applicable to using uncertified engines in California.

California Air Resources Board John Deere

By: 
Name: James Ryden
Title: Division Chief

By: 
Name: Martin Schramm
Title: Platform Manager Safety,
Standards, and Compliance
Deere & Company

Date: 12/31/12

Date: 14 November 2012