

## 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 THE TORO COMPANY (hereinafter “TORO”) with its principal place of business at 8111 Lyndale Avenue, Bloomington, MN 55420.

### I. RECITALS

- (1) California Code of Regulations, title 13, section 2400(a)(2) states, “Every new small off-road engine that is manufactured for sale, sold, or offered for sale in California, or that is introduced, delivered or imported into California for introduction into commerce, and that is subject to any of the standards prescribed in this article must be covered by an Executive Order, issued pursuant to this article.”
- (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, 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.”
- (3) TORO manufactures outdoor power equipment, including its Toro branded Professional 6000 Propane ZMaster and Exmark branded Lazer Z X-Series, Lazer Z S-Series, Turf Tracer X-Series, and Turf Tracer S-Series propane commercial mowers. Each propane commercial mower employs a small off-road engine that is offered for sale, sold, and delivered or imported into California. TORO relied on Executive Orders U-U-113-0025 (March 25, 2010) and U-U-113-0031 (July 27, 2012), which were issued to Toro’s supplier, Onyx Environmental Solutions (Onyx) for the propane-conversion kits and the converted, small off-road engines used in Toro’s propane commercial mowers. The propane-configurations of the converted engines generally result in an improved emissions performance relative to the certified, gasoline-configuration of these engines.
- (4) Pursuant to Cal/EPA’s Guidance on “Incentives for Voluntary Disclosure,” TORO self-reported to ARB sales of its Toro branded Professional 6000 Propane ZMaster and Exmark branded Lazer Z X-Series, Lazer Z S-Series, Turf Tracer X-Series, and Turf Tracer S-Series propane commercial mowers and the corresponding small off-road engines in California prior to Onyx receiving an Executive Order for the years of 2011 and 2012. Propane commercial mowers with the following serial numbers were sold to end-users in California;

311000114, 944654, 944655, 944656, 944659, 945841, and 976127; while propane commercial mowers with the following serial numbers were sold and delivered to dealers and distributors in California for retail; 944657, 944658, 954440, 976132, 982358, 982359, 982360, 982361, and 982362. Nine products not sold to California end-users were recalled by TORO at a considerable expense through a self-initiated corrective action and removed from California. ARB Enforcement Division staff, with the cooperation of TORO, has documented the alleged violations of Title 13, California Code of Laws and Regulations, Sections 2400 and California Health and Safety Code section 43016 during the years of 2011 and 2012.

- (5) TORO fully cooperated with ARB in the investigation of this matter and in removing the nine products out of the state.

## **II. TERMS AND RELEASE**

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

- (1) As a condition of this Agreement TORO shall pay the total sum of five thousand five hundred dollars (\$5,500) as a penalty to the California Air Pollution Control Fund, subject to the following terms.

Payment shall be made by check payable as described above and addressed to:

Mr. Jeremiah Bearden  
Air Resources Board, Enforcement Division  
PO Box 2815  
Sacramento, CA 95812

- (2) TORO represents that it understands the legal requirements applicable to selling engines in California and agrees that it will not introduce products to commerce unless ARB certification has first been obtained. TORO agrees that it will not acquire, offer for sale or sell new, non-California certified engines for use or registration in California and TORO promises that any engines in its possession not certified to California emission standards will be clearly marked: "Not for Sale or Use in California".
- (3) This Agreement shall apply to and be binding upon TORO and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, dealers, distributors, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (4) This Agreement constitutes the entire agreement and understanding between ARB and TORO 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 TORO concerning these claims.

- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) 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.
- (11) **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) 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 \$500 per unit per strict liability violation. The penalty obtained in this case is based on a \$400 per unit penalty for the seven units that were sold to California consumers – and \$300 per unit for

the nine units that Toro voluntarily removed out of California at considerable expense. The penalty was reduced because this was an unintentional, first time violation which resulted from the actions of Toro's supplier, Onyx; Toro's exceptionally diligent efforts to comply promptly, to voluntarily remove products and to fully cooperate with the investigation, and the nature and means of discovery of the violations under Toro's self-disclosure.

**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 43016, is appropriate because TORO allegedly sold engines not certified by ARB.

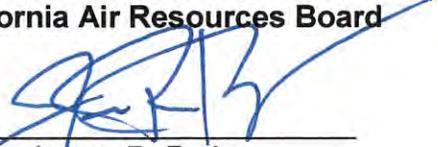
**Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.**

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. However, since the converted small off-road engines involved in this case were illegal for use or sale in California, when they were shipped into California all of the emissions attributable to them are illegal and excess as well.

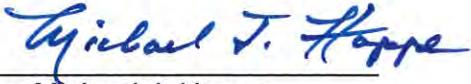
- (12) TORO acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health and Safety Code section 43024, has explained the manner in which the penalty amount was calculated (including a per 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.
- (13) 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.
- (14) The penalty in this case was based in part on confidential business information provided by TORO 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 TORO 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 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.

**California Air Resources Board**

By:   
Name: James R. Ryden  
Title: Chief, Enforcement Division  
Date: 4/3/13

**The Toro Company**

By:   
Name: Michael J. Happe  
Title: Group VP-Residential & Contractor Bus.  
Date: