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 Walmart Stores, Inc. (hereinafter "WALMART") with its principal place of business at 508 Southwest 8th Street, Bentonville, Arkansas 72716.

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 regulations. Any penalty collected pursuant to this section shall be payable to the State Treasurer for deposit in the Air Pollution Control Fund."

(3) On March 22, 2011 and March 29, 2011, ARB field staff issued two Notices of Violation for several non-compliant gasoline powered lawnmowers at WALMART's retail stores, located at 3460 El Camino Avenue, Sacramento, CA 95821 and 755 Riverpoint Court, West Sacramento, CA 95605.

(4) The lawnmowers cited were a Yardman 21" push mower with a non-California certified Briggs and Stratton 625 series 190cc engine, with engine number ABSXS.1901VH and a Weed Eater lawnmower model with a non-California certified Briggs and Stratton 158cc engine, with engine number ABSXS.1581VG.

(5) Upon further investigation by WALMART and ARB, additional non-California certified lawnmowers were found to have been sold and offered for sale in California.

(6) WALMART cooperated in providing documentation for all non-certified mowers that were sold, as well as removing the products from California.

(7) WALMART also placed additional blocks in their system to prevent such an error from occurring again.

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, the sum thirty-nine thousand seven hundred and fifty ($39,750) shall be paid on behalf of WALMART, to the California Air Pollution Control Fund.

Send check to: Attn: Tony Zeng
Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, California 91731

(2) WALMART shall not violate 13 California Code of Regulations section 2400(a)(2) with respect to the sale of non-certified small off-road engines.

(3) This Agreement shall apply to and be binding upon WALMART 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 WALMART concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between ARB and WALMART 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 39617) requires 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 $500.00 per unit per strict liability violation. The penalty obtained in this case is approximately $375.00 per unit for 106 units and was reduced because of WALMART's diligent efforts to comply and promptly and fully cooperate with the investigation and taking swift corrective and remedial action.

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 WALMART allegedly sold, and/or offered for sale the subject small off-road engines that were 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 generators involved in this case are illegal for use or sale in California, all of the emissions attributable to them are illegal as well.

(12) WALMART 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 cases, 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. The penalty was discounted in this matter for the reasons stated above, including the fact that this was an innocent, first time violation and because WALMART made unusually diligent efforts to comply and to cooperate with ARB's investigation. 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 WALMART 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 WALMART 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 WALMART, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that WALMART may have secured from its actions.

California Air Resources Board

By: Ellen M. Peter
Name: Ellen M. Peter
Title: Chief Counsel
Date: 9/10/2012

Walmart Stores, Inc.

By: Richard A Hays
Name: Richard A. Hays
Title: Merchandising VP
Date: 8-27-12