

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB"), with its principal office at 1001 I Street, Sacramento, California 95814 and ROGUE JET BOATWORKS, INC (hereinafter "ROGUE"), with its principal place of business at 2845 Merry Lane, White City, Oregon 97503 (collectively, "The Parties").

RECITALS

- (1) CARB regulates Marine Watercraft under Title 13, California Code of Regulations, Article 4, section 2850 – 2869, Evaporative Emissions Requirements for Spark- Ignited Marine Watercraft with Gasoline-Fueled Engines. California Code of Regulations, title 13, section 2851 (13 CCR §2851) states, "This Article applies to all new model year (MY) 2018 or later spark-ignition marine watercraft (SIMW), spark-ignition marine engines (SIME), and/or any of its evaporative emission control system components for sale, lease, use or offered for sale, lease or use, or otherwise introduced into commerce in California (hereinafter collectively referred to as "sold or offered for sale")."
- (2) 13 CCR §2852(a) states, in pertinent part, "No person may manufacture for sale, advertise for sale, sell, or offer for sale in California, or introduce, deliver, or import into California SIMW, SIME, and/or its evaporative emissions control system components that are subject to any of the applicable standards and procedures in sections 2854 or 2855 if the SIMW or evaporative emissions control system component is: (1) Not certified under section 2856 as applicable..."
- (3) 13 CCR §2860 states, in pertinent part, "ARB recognizes that SIMW must be properly labeled in order to identify those that meet applicable evaporative emissions standards. These specifications require that evaporative system builders and/or SIME manufacturers affix a certification label (or labels) on each SIMW they assemble with an evaporative emissions control system."
- (4) California Health and Safety Code section 43016 (HSC §43016) states, in pertinent part, "A 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 not to exceed thirty-seven thousand five hundred dollars (\$37,500) for each such action pursuant to this part. Violations involving portable fuel containers or small off-road engines shall be subject to a civil penalty not to exceed five hundred dollars (\$500) per unit. For a manufacturer or distributor who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, the payment of the penalty and making the product compliant with applicable emission control laws may be required by the executive officer of the state board as conditions for

the continued sale in this state of those products regulated by the state board pursuant to this division.”

- (5) On March 8, 2018, CARB inspected ROGUE at an exposition, issued Notice of Violation (NOV) #2451 for four (4) vessels with non-complaint Spark-Ignited Marine Watercraft Evaporative Systems, and initiated an investigation which found 14 additional non-compliant vessels were sold into California in violation of 13 CCR §2850 et seq.
- (6) The manufacture for sale, advertisement, offers for sale, sales, and delivery of the noncertified SIMW in California were unlawful and in violation of 13 CCR §2852.
- (7) CARB alleges that if the facts described in recital paragraphs 1-6 were proven, civil penalties could be imposed against ROGUE as provided in H&SC §43016.
- (8) ROGUE is willing to enter into this Agreement solely for the purpose of settlement and resolution of the allegations, claims, and violations identified herein. CARB accepts this Agreement in termination of the allegations, claims, and violations identified herein. Accordingly, the parties agree to resolve the allegations, claims, and violations identified herein completely by means of this Agreement, without the need for formal litigation.

TERMS AND RELEASE

In consideration of CARB not filing a legal action against ROGUE for the allegations, claims, and violations referred to above in Recitals (1) through (7), and in consideration of the other terms set out below, CARB and ROGUE agree as follows:

- (1) As a condition of this Agreement, ROGUE shall pay the total sum of seventy-two thousand, five hundred dollars (\$72,500), with thirty-six thousand, two hundred and fifty dollars (\$36,250) as a civil penalty to the **California Air Pollution Control Fund** and the other thirty-six thousand, two hundred and fifty dollars (\$36,250) going to a Supplement Environmental Project (SEP) as detailed below. Payment shall be made within 30 days of execution of this Agreement, as described below.
- (2) As a further condition of this Agreement, ROGUE has agreed to undertake a Supplemental Environmental Project (SEP) as described in ATTACHMENT B – SUPPLEMENTAL ENVIRONMENTAL PROJECT AGREEMENT – Placer County Community Based SEP Phase 2 (SEP Agreement) (referred to as SEP) to offset a portion of the penalty, consistent with CARB’s SEPs Policy. Pursuant to this Agreement, ROGUE shall make payment according to the schedule below.

- (3) ROGUE has agreed that by funding Placer County Community Based SEP Phase 2 they will not receive any direct or indirect financial benefit, and that whenever it publicizes the SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of a CARB enforcement action.
- (4) Upon agreeing to the terms set forth in the SEP Agreement, and funding the Placer County Community Based SEP Phase 2, ROGUE is released of all liabilities as they relate to the Placer County Community Based SEP Phase 2 as reflected in this underlying Settlement Agreement.
- (5) In the event the SEP is not fully implemented in accordance with the terms of the SEP Agreement, CARB (as the third party beneficiary) shall be entitled to recover the full amount of the SEP from the SEP implementers, less any amount waived based on the timely and successful completion of any previous agreed upon interim milestone(s). CARB will deposit any such recovery into the California Air Pollution Control Fund. Accordingly, ROGUE shall assign any and all rights against the SEP implementers to CARB.

Payment Due Date:	In the Amount of and Payable to:	
Thirty Days from Settlement Execution	\$36,250	Air Pollution Control Fund
Thirty Days from Settlement Execution	\$36,250	Placer County Air Pollution Control District

The signed Agreement and any future mailings or documents per the terms of this Agreement shall be mailed to:

**Ms. Claira Aramouni
Air Pollution Specialist
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, California 95812**

For payments made to the Air Pollution Control Fund, please send the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

**California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812-1436**

Certified or Cashier's Checks:

California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812-1436

Wire Transfers:

State of California Air Resources Board
C/O Bank of America, Inter Branch to 0148
Routing No. 0260-0959-3 Account No. 01482-80005
Notice of Transfer: Edna Murphy Fax: (916) 322-9612
Reference: CARB Case # C00138

Wire Transfer Fee: Vendor is responsible for any bank charges incurred for processing wire transfers.

Notification of each wire transfer shall be provided to:

Ms. Claira Aramouni
Air Pollution Specialist
California Air Resources Board
Enforcement Division
Claira.Aramouni@arb.ca.gov
(626) 459-4327

For payments made to the Placer County Air Pollution Control District, please send the payment along with the attached "Supplemental Environmental Project Payment Transmittal Form" (Attachment A - 2) to:

Placer County Air Pollution Control District
For: Placer County Community Based SEP Phase 2
110 Maple Avenue
Auburn, California 95603

In addition, a copy of each payment check made to the Placer County Air Pollution Control District shall be shall be provided to:

Ms. Claira Aramouni
Air Pollution Specialist
California Air Resources Board
Enforcement Division
Claira.Aramouni@arb.ca.gov
(626) 459-4327

- (6) Effect of Untimely Payment. If any payment is more than fifteen (15) days late, the entire remaining balance, plus a penalty interest rate of 10% per annum on the entire remaining balance from the date initially due shall become immediately due and payable without notice or demand.
- (7) If the Attorney General files a civil action to enforce this settlement agreement, ROGUE shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (8) This Agreement is limited to the allegations, claims, and violations described above. This Agreement does not release liability for any alleged claims or violations not identified herein, or any claims or violations based on allegations other than those identified herein.
- (9) It is agreed that if ROGUE at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving ROGUE, 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 ROGUE, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of ROGUE's properties, or if any deposit account or other property of ROGUE be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or ROGUE takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.
- (10) ROGUE shall not manufacture for sale, advertise for sale, sell, or offer for sale in California, or introduce, deliver, or import into California SIMW, SIME, and/or its evaporative emissions control system components in violation of California Code of Regulations, Title 13, Division 3 or Part 5, Division 26 of HSC.
- (11) This Agreement shall apply to and be binding upon ROGUE and its principals, officers, directors, agents, dealers, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (12) Now therefore, in consideration of the payment by ROGUE in the amount of thirty-six thousand, two hundred and fifty dollars (\$36,250) to the California Air Pollution Control Fund and thirty-six thousand, two hundred and fifty dollars (\$36,250) payable to Placer County Air Pollution Control District, CARB hereby releases ROGUE and its principals, officers, directors, agents, dealers, subsidiaries, predecessors, and successors from the claims CARB may have based upon the events described in Recitals above.
- (13) The undersigned represent that they have the authority to enter this Agreement.

- (14) This Agreement constitutes the entire agreement and understanding between CARB and ROGUE concerning the claims, violations, 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 CARB and ROGUE concerning these claims and violations.
- (15) 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.
- (16) 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.
- (17) 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.
- (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 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.
- (20) 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.
- (21) This Agreement may be executed by facsimile and in counterparts by the Parties and their representatives, and the counterparts shall collectively constitute a single, original document, notwithstanding the fact that the signatures may not appear on the same page.
- (22) Senate Bill 1402 (Dutton, chapter 413, statutes of 2010) requires CARB to provide information on the basis for the penalties it seeks (see H&SC 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 H&SC §43024. The per-unit penalty in this case is a maximum of \$37,500 per unit per strict liability violation. The penalty obtained in this case is \$4,027.78 per unit for 18 vessels, for a total penalty of \$72,500. The penalty per unit in this case has been reduced because ROGUE provided proof of removal, cooperated with the investigation, submitted requested documentation, has a history of compliance, and obtained certification to avoid future violations.

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 H&SC §43016 because ROGUE brought into commerce uncertified units into California, in violation of 13 CCR §2852, and manufactured for sale, advertised for sale, sold, or offered for sale in California, or introduced, delivered, or imported into California uncertified SIMW, SIME, and/or its evaporative emissions control system components 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. However, since the SIMW evaporative emission control systems were not certified by CARB, all emissions attributable to them are illegal and excess, but quantifying them is not practicable because the information required to do so is unavailable.

- (23) ROGUE acknowledges that CARB has complied with SB 1402 in prosecuting and settling this case. Specifically, CARB has considered all relevant facts, including those listed at H&SC §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.
- (24) 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.

- (25) The penalty was also based on confidential business information provided by ROGUE that is not retained by CARB in the ordinary course of business. The penalty was also based on confidential settlement communications between CARB and ROGUE that CARB does not retain in the ordinary course of business either. The penalty is the product of an arm's-length negotiation between CARB and ROGUE and reflects CARB's assessment of the relative strength of its case against ROGUE, the desire to avoid the uncertainty, burden, and expense of litigation, to obtain swift compliance with the law, and to remove any unfair advantage that ROGUE may have secured from its actions.
- (26) ROGUE represents that it understands the legal requirements applicable to introducing new vessels into California.

California Air Resources Board

By: _____/S/_____

Name: Ellen M. Peter

Title: Chief Counsel

Date: _____5/10/2021_____

ROGUE JET BOATWORKS, INC

By: _____/S/_____

Name: Bruce C. Wassom_____

Title: President/CEO

Date: _____2/10/2021_____