

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 VALLEY POWER SYSTEMS, INC. (hereinafter "VPSI"), 425 S. Hacienda Boulevard, City of Industry, California 91745.

I. RECITALS

- (1) The Verification Procedure for In-Use Strategies to Control Emissions from Diesel Engines ("Verification Procedure"), as codified in California Code of Regulations, title 13, sections 2700-2711 (13 CCR §§ 2700-2711), provides at § 2702 that if the Executive Officer of ARB grants verification of a diesel emission control strategy (DECS), he or she will issue an Executive Order (EO) to the strategy's applicant identifying the verified emission reduction level and any conditions that must be met for the DECS to function properly. The Verification Procedure itself also places conditions on applicants and DECS.
- (2) The Verification Procedure provides in § 2706(q) that no person or entity shall advertise, sell, lease, supply, offer for sale, represent, or install any device, apparatus, mechanism, or fuel based system as a verified DECS for or on any engine, vehicle or equipment that does not meet the terms and conditions of the strategy's EO. The applicant, distributor, and/or installer must ensure that each verified DECS is supplied, sold, leased, and installed pursuant to the provisions of the EO.
- (3) The installation of a DECS on an engine that is not approved in the applicable EO is a violation of the Verification Procedure, and the DECS is not verified for that applications.
- (4) ARB's investigation alleges certain violations of the Verification Procedure and the applicable EOs, with respect to Johnson Matthey DECS systems installed between 2006 and 2008 by VPSI that do not conform to the conditions specified in the Verification Procedure and the applicable EOs. In particular, VPSI failed to ensure that ten DECS systems with DECS family names CA/JMI/2005/PM3/N00/ON/DPF01 and CA/JMI/2007/PM3/N00/ON/DPF01 were installed on the engines approved in the applicable EOs.
- (5) Health and Safety Code, sections 39674 (a) and (b) (HSC §§ 39674 (a) and (b)) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars (\$1,000) or ten thousand dollars (\$10,000), respectively, for each day in which the violation occurs.

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- (6) In order to resolve these alleged violations, VPSI has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, ARB accepts this Agreement in termination and settlement of this matter.
- (7) 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, ARB and VPSI agree as follows:

II. TERMS AND RELEASE

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

- (1) Upon execution of this Agreement, the sum of thirty-three thousand two hundred twelve dollars (\$33,212.00) shall be paid on behalf of VPSI no later than **December 18, 2014**, as follows:
 - \$24,909.00 to the **Air Pollution Control Fund**
 - \$8,303.00 to the **Peralta Colleges Foundation**

Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:

**Mr. Xiangyi Li, Ph.D., P.E.
Air Resources Engineer
California Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, CA 91731**

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, CA 95812-1436**

- (2) If the Attorney General files a civil action to enforce this settlement agreement, VPSI shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.

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- (3) 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 VPSI 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 VPSI through by ARB arising from the facts described in recital paragraphs (1) through (5) 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.
- (4) VPSI shall not violate any provision of California Vehicle Code section 27156.
- (5) VPSI shall not violate Aftermarket Parts Exemption Procedures established in 13 CCR §§ 1900 et seq., 2030-2031, 2047-2048, 2200-2207 and 2220-2225.
- (6) VPSI shall not violate the Verification Procedure (13 CCR §§ 2700-2711) or any EOs issued by ARB.
- (7) VPSI shall ensure that the terms and conditions specified in the applicable EO are met prior to installing, selling, offering for sale, or advertising any DECS in California.
- (8) Within 180 days of execution of this Agreement, VPSI shall remove the non-verified DECS listed in the table below, and shall replace them with appropriate, currently verified DECS systems. The DECS must be verified for the engine and applications as of the date of the installation. The removed non-verified DECS shall not be sold or marketed as verified DECS in California.

Vehicle ID	VIN	Engine	Engine Family Name	DECS Family Name	DECS Serial Number
855-Y	1GDJ7H1C02J517783	Cat	2CPXH0442HBX	CA/JMI/2005/PM3/N00/ON/DPF01	C228931
658-E	1FVABUAK83DK86218	Cat	2CPXH0442HBX	CA/JMI/2005/PM3/N00/ON/DPF01	C2705
659-E	1FVABUAKX3DK86219	Cat	2CPXH0442HBX	CA/JMI/2005/PM3/N00/ON/DPF01	C228092
680-WT	1HTWPAZR47J469838	Intl	6NVXH0570AEA	CA/JMI/2005/PM3/N00/ON/DPF01	C228902
679-WT	1HTWPAZR27J469837	Intl	6NVXH0570AEA	CA/JMI/2005/PM3/N00/ON/DPF01	C223936
639-F	1HTWBAAR25J187432	Intl	5NVXH0466AEA	CA/JMI/2007/PM3/N00/ON/DPF01	C239564

- (9) Within 210 days of execution of this Agreement, VPSI shall provide a written report to ARB, addressed to **Mr. Xiangyi Li, Ph.D., P.E., Air Resources Engineer, California Air Resources Board, Enforcement Division, 9480 Telstar Avenue, Suite 4, El Monte, California 91731**, documenting VPSI's effort pursuant to paragraph (8) above. VPSI must track DECS, engines,

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vehicles and corrective actions involved in this enforcement case, and correlate them to one another.

- (10) This Agreement shall apply to and be binding upon VPSI, 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.
- (11) This Agreement constitutes the entire agreement and understanding between ARB and VPSI concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and VPSI concerning the subject matter hereof.
- (12) 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.
- (13) 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.
- (14) 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.
- (15) 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.
- (16) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (HSC § 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 §§42403 and 43024. 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 per unit or per vehicle penalty in this case is a maximum of \$1,000 per unit per day for strict liability violations and \$10,000 per unit per day for negligent or intentional violations. The total penalty in this case is \$33,212 for ten non-compliant units for an approximate average per unit penalty of \$3,321 over an

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unspecified number of days of violation. This penalty was calculated by considering all factors specified in HSC § 43024, including 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.

The penalty provision being applied in this case is HSC § 39674 because VPSI failed to comply with the Verification Procedure, 13 CCR §§ 2700-2711, which was adopted under authority of HSC § 39600, et seq.

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 prohibit emissions above a specified level. However, since the hours of operation of the non-compliant units involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (17) VPSI 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 § 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.
- (18) 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.
- (19) The penalty was based on confidential settlement communications between ARB and VPSI that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and VPSI and reflects ARB's assessment of the relative strength of its case against VPSI, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that VPSI may have secured from its actions.

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(20) Now therefore, in consideration of the payment on behalf of VPSI to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases VPSI and their principals, officers, agents, predecessors and successors from any and all claims, ARB may have or have in the future based on the circumstances described in paragraph (1) through (5) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

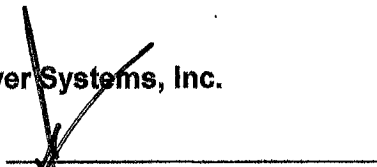
California Air Resources Board

Valley Power Systems, Inc.

Signature:


Print Name: Ellen M. Peter ← **for**

Signature:


Print Name: Michael Lee

Title:

Chief Counsel

Title:

Vice President

Date:

12-29-14

Date:

December 15, 2014