

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB") 1001 I Street, Sacramento, California 95814, KERR TRUCKING, INC., 14796 Washington Drive, Fontana, CA 92335.

I. RECITALS

- (1) California Health and Safety Code section 39650-39675 (HSC §§ 39650-39675) mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive ten-year scientific assessment process, CARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use on-road diesel vehicles are powered by diesel fueled engines that emit toxic PM. On-road vehicles are controlled under the Truck and Bus regulation, as codified in (13 CCR § 2025).
- (2) 13 CCR § 2025(x)(2) provides that "Any in-state or out-of-state motor carrier, California broker, or any California resident, who operates or directs the operation of any vehicle subject to this regulation shall verify that each hired or dispatched vehicle is in compliance with the regulation and comply with the record keeping requirements of section 2025(s)(4)."
- (3) Failure to comply with the requirements of 13 CCR § 2025 is a violation of state law resulting in penalties. 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.
- (4) CARB Enforcement Division has documented that KERR TRUCKING, INC. is a "California Based Broker" under 13 CCR § 2025(d)(11), and that KERR TRUCKING, INC. failed to verify that each hired or dispatched vehicle was in compliance with the Truck and Bus regulation and to comply with the record keeping requirements.
- (5) In order to resolve these alleged violations, KERR TRUCKING, INC. has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, CARB accepts this Agreement in termination and settlement of this matter.
- (6) 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, CARB and KERR TRUCKING, INC. agree as follows:

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II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against KERR TRUCKING, INC. for the alleged violations referred to above, and KERR TRUCKING, INC.'s payment of the penalties set forth below, CARB and KERR TRUCKING, INC. agree as follows:

- (1) Upon execution of this Agreement, KERR TRUCKING, INC. shall pay a civil penalty of fifteen thousand five hundred dollars. Payment shall be made in three payments as described below, beginning on **October 1, 2019**

Payment Due Date:	In the Amount of and Payable to:
(1) October 1, 2019	\$5,500.00 the Air Pollution Control Fund
(2) November 1, 2019	\$5,000.00 the Air Pollution Control Fund
(3) December 2, 2019	\$5,000.00 the Air Pollution Control Fund

The Parties shall exchange signed copies of this Agreement. This Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement. **Please send the original signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:**

Mr. Nelson Van
Air Pollution Specialist
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, California 95812

Please submit each payment by the applicable payment due date along with the corresponding "Settlement Agreement Payment Transmittal Form" (**Attachment A**) to:

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

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- (2) Effect of Untimely Payment. If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable. In addition, if the Attorney General files a civil action to enforce this settlement agreement, KERR TRUCKING, INC. shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (3) It is agreed that if KERR TRUCKING, INC., including its subsidiary or parent company, at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving KERR TRUCKING, INC., its subsidiary, or parent company, 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 KERR TRUCKING, INC., its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of KERR TRUCKING, INC.'s, its subsidiary, or parent company's properties, or if any deposit account or other property of KERR TRUCKING, INC., its subsidiary, or parent company be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or KERR TRUCKING, INC., its subsidiary, or parent company takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.
- (4) 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 KERR TRUCKING, INC. for violations of state environmental statutes, and these penalties are payable to and for the benefit of CARB, a government unit. Therefore, it is agreed that these penalties imposed on KERR TRUCKING, INC. by CARB arising from the facts described in recital paragraphs (1) through (4) 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.
- (5) KERR TRUCKING, INC. shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025. Within 60 days of the execution of this Agreement, KERR TRUCKING, INC. shall submit (1) a compliance plan to demonstrate KERR TRUCKING, INC. verification process of hiring vehicles subject to the Truck and Bus regulation pursuant to 13 CCR § 2025(x)(2). The compliance plan and evidence of verification in 2019 shall be subject to CARB approval. This term shall not be deemed satisfied until CARB has approved the submissions by

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KERR TRUCKING, INC., which approval shall not be unreasonably withheld. The compliance plan shall include the following information:

- a. Dates by which annual verifications of compliance will take place beginning in 2019;
 - b. The form of the verification; and
 - c. The actions KERR TRUCKING, INC. shall take if compliance cannot be verified.
- (6) This Agreement shall apply to and be binding up KERR TRUCKING, INC., and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and potent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement. Upon CARB' approval of the completion of the requirements in Section II, paragraphs (1) and (4), KERR TRUCKING, INC. shall be in compliance with the terms of this agreement.
- (7) This Agreement constitutes the entire agreement and understanding between CARB and KERR TRUCKING, INC. concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between CARB and KERR TRUCKING, INC. concerning the subject matter hereof.
- (8) 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.
- (9) 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.
- (10) 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.
- (11) 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.
- (12) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires CARB 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:

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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.

Truck and Bus Violations

The per unit penalty for the alleged Truck and Bus violations involved in this case is a maximum of \$1,000.00 per vehicle per day for strict liability violations or \$10,000.00 per vehicle for negligent or intentional violations.

The penalty obtained for the Truck and Bus violation involved in this case for failure to verify that each hired or dispatched vehicle was in compliance with the Truck and Bus regulation is \$5,500.00 for twenty-two hired fleets in 2017 and 2018 determined to be in compliance with the Truck and Bus regulation, or \$250.00 per hired fleet, and \$10,000 for four hired fleet in 2017 and 2018 determined to be out of compliance with the Truck and Bus regulation, or \$2500.00 per hired fleet.

The penalty was discounted based on the fact that this was a first-time violation and the violator made effort to comply with the broker verification requirements in 13 CCR § 2025 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.

Truck and Violations

The penalty provision being applied for the Truck and Bus regulation (13 CCR § 2025) violations in this case is HSC § 39674 because the Truck and Bus regulation is an Airborne Toxic Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because CARB alleges that KERR TRUCKING, INC. failed to verify that each hired or dispatched vehicle was in compliance with the Truck and Bus regulation.

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.

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Truck and Bus Violations

The provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the noncompliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (13) KERR TRUCKING, INC. acknowledges that CARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, CARB 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.
- (14) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from the alleged 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.
- (15) The penalty was based on confidential settlement communications between CARB and KERR TRUCKING, INC. that CARB does not retain in the ordinary course of business. The penalty is the product of an arm's length negotiation between CARB and KERR TRUCKING, INC. and reflects CARB's assessment of the relative strength of its case against KERR TRUCKING, INC., the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that KERR TRUCKING, INC. may have secured from its actions.
- (16) The parties shall exchange signed copies of this Agreement. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this agreement.
- (17) Now therefore, in consideration of the payment on behalf of KERR TRUCKING, INC. to the Air Pollution Control Fund, CARB hereby releases KERR TRUCKING, INC. and their principals, officers, agents, predecessors and successors from any and all claims, CARB may have or have in the future based on the circumstances described in paragraphs (1) through (4) of the Recitals. The undersigned represent that they have the authority to enter in to this Agreement.

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California Air Resources Board

KERR TRUCKING, INC. Produce, Inc.

Signature: /S/

Signature: /S/

Print Name: Todd P. Sax, D.Env

Print Name: Darryl R. Kerr

Title: Chief, Enforcement Division

Title: President

Date: 10/17/19

Date: 8/26/19