

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Basalite Concrete Products, LLC, (hereinafter "Basalite") with its principal location at 10600 White Rock Road, Rancho Cordova, California 95670 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) **Purpose.** The California Health and Safety Code (Health & Saf. Code) mandates the reduction of the emission of toxic air contaminants (TAC). CARB has determined that particulate matter (PM) from diesel-fueled engines is a TAC. (Health & Saf. Code §§ 39002, et seq., 39650-39675.) In-use on-road diesel vehicles are powered by diesel fueled engines that emit toxic PM.
- (2) **Regulation.** CARB adopted the California Code of Regulations (Cal. Code Regs.) *Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles (Truck and Bus Regulation)* to reduce diesel PM and criteria pollutant emissions from on-road heavy-duty diesel-fueled vehicles. (Cal. Code Regs., tit.13, § 2025.)
- (3) **Regulatory Provisions.** Any person, business, federal government agency, school district or school transportation provider, or broker, that owns, operates, leases, rents or sells vehicles in California that operate on diesel-fuel, dual-fuel, or alternative diesel-fuel, that are registered to be driven on public highways, were originally designed to be driven on public highways whether or not they are registered, yard trucks with on-road engines or yard trucks with off-road engines used for agricultural operations, both engines of two-engine sweepers, school buses, and have a manufacturer's gross vehicle weight rating (GVWR) greater than 14,000 pounds must comply with the broker requirements by January 1, 2012. (Cal. Code Regs., tit. 13, § 2025.)
- (4) **Penalty Provisions.** Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to ten thousand dollars (\$10,000.00) for strict liability violations; respectively, for each day in which the violation occurs. (Cal. Code Regs., tit.13, § 2025; Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., and 42410.)

CASE BACKGROUND

- (5) **Corporate Entity.** At all relevant times, Basalite was organized under the laws of California as a limited liability company, and conducted business in the State of California.

- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) HDD 2018-0044, which was issued on April 29, 2020. CARB alleges Basalite violated the Truck and Bus Regulation by failing to comply with the broker requirements (Cal. Code Regs., tit. 13, § 2025(x)), resulting in violations, as outlined in Notice of Violation HDD-2018-0044. CARB alleges that if the allegations described in paragraphs (1) through (6) were proven, civil penalties could be imposed against Basalite for each and every vehicle involved in the violations and each day.
- (7) Acknowledgment. Basalite admits to the facts in paragraphs (1) through (6), but denies any liability resulting from said allegations.
- (8) Consideration. 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 alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, Basalite has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against Basalite for the alleged violations referred to above in the Legal Background and Case Background, and Basalite agreement to complete all terms and conditions set forth below, CARB and Basalite agree as follows:

- (9) Settlement Amount. Basalite shall pay a civil penalty of twelve thousand dollars (\$12,000.00 USD). Basalite shall make all payments within 30 calendar days from the date CARB notifies Basalite of the full execution of the Settlement Agreement.

Payment Due Date:	In the Amount Of and Payable To:	
August 28, 2020	\$12,000.00	California Air Resources Board

- (10) Civil Penalty Payment Method. Basalite shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Basalite is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control

programs. Should payment instructions change, CARB will provide notice to Basalite in accordance with Paragraph (13) Notices.

- (11) **Other Relief.** Basalite shall not operate or direct the operation of any vehicle subject to the Truck and Bus Regulation without obtaining a completed form entitled Notice of Requirement for Carriers to Comply with California Air Resources Board's Truck and Bus Regulation (Notice), as codified in 13 CCR § 2025(x)(2) for each vehicle hired or dispatched. A copy of the Notice is enclosed hereto. The Notice may be subject to change as required by law or by mutual agreement of the parties. Basalite shall submit a copy of each Notice for the remainder of 2020 and year 2021 to CARB by January 31 of the following year. CARB reserves the right to visit any Basalite location at any time to conduct compliance audits for the compliance requirements codified in 13 CCR § 2025(x)(2), or any other applicable CARB program.
- (12) Documents. Basalite shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, mitigation, and/or SEP (if applicable), a copy of the Payment Transmittal Form(s) (if applicable), and the signed and dated Compliance Plan (if applicable) to the address or email in Paragraph (13) Notices.
- (13) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board
Enforcement Division / Settlement Agreements
DPEB / Specialized Fleet Enforcement Section
P.O. Box 2815
Sacramento, CA 95812-2815
Settlement_Agreement@arb.ca.gov

As to Basalite:

Basalite Concrete Products, LLC
Dan Yanagihara, Jr
10600 White Rock Road, Suite 100, Building B
Rancho Cordova, CA 95670
Daniel.Yanagihara@pcci.com

As to Basalite Legal Representation:

James T. Dufour
Dufour Law
819 F Street

Sacramento, CA 95814
dufourlaw@dufourlegal.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (14) Repeat Violations. Basalite agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (15) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background, and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 7 pages and 34 paragraphs.
- (16) Binding Effect. This Settlement Agreement binds Basalite, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (17) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (18) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (19) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (20) Choice of Law. This Settlement 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.
- (21) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 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 the benefit of a governmental unit.

- (22) Not Tax Deductible. For purposes of this Settlement Agreement, Basalite shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
- (23) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (24) Non-Waiver. The failure to enforce any provision of this Settlement 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 Settlement 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 Settlement Agreement or otherwise provided by law.
- (25) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (26) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (27) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (28) Release. In consideration of the full completion of civil penalty and all other undertakings above, CARB hereby releases Basalite and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (29) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (30) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of ten thousand dollars (\$10,000.00) per day under Health and Safety Code section 39674, for violations of the Truck and Bus Regulation. (Cal. Code Regs., tit.13, § 2025.) The penalty of \$12,000.00 over an unspecified number of days of violation is for failing to verify that each hired fleet or dispatched vehicle is in compliance with the regulation and comply with the recordkeeping requirements (Cal. Code Regs., tit.13, § 2025(s)(4)). The penalty per fleet hired and not verified in this case is \$4,000.00 per fleet per year hired.
- (31) Emissions. The provisions cited above do prohibit emissions above a specified level. Without information on engine usage and emission rates, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the vehicles(s) did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- (32) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described by CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.
- (33) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Basalite and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: _____ /S/ _____

Basalite Concrete Products, LLC Settlement Agreement
Notice of Violation: HDD-2018-0044

Name: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Date: 8/18/2020

Basalite Concrete Products, LLC

Signature: /S/

Name: Bryan Langland

Title: Manufacturing Manager

Date: 8/12/2020