

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 Hal Hays Construction, Inc., Heritage Transportation, Inc., and Golden Bear Equipment, Inc. with their principal location at 4181 Latham Street, Riverside, California 92501, and Cal Pacific Constructors, Inc. with its principal location at 8850 Old Oregon Trail, Redding, California 96002 (referenced herein as Hal Hays and Subsidiaries) (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates the reduction of emission of air pollution from motor vehicles, creates the Motor Vehicle Inspection Program, and requires CARB to adopt regulations that require owners and operators of heavy-duty vehicles to perform regular inspections of their vehicles for excess emissions. (Health & Saf. Code §§ 43013, 43018, 43701, 44011.6.)

The California Health and Safety Code mandates the reduction of the emission of toxic air contaminants (TAC), oxides of nitrogen (NO_x), and diesel particulate matter (PM). (Health & Saf. Code, §§ 39002, et seq., 39650-39675.) In-use off-road diesel fueled vehicles are powered by diesel fueled engines that emit toxic PM.

CARB has determined that 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 "*Periodic Smoke Inspections of Heavy-Duty Diesel-Powered Vehicles*" Regulation (Cal. Code Regs., tit. 13, §§ 2190 et seq.) (PSIP Regulation) to reduce excess smoke opacity emissions from heavy-duty vehicles.

CARB adopted the *In-Use Off-Road Diesel-Fueled Fleet Regulation* (Off-Road Regulation) to reduce diesel PM and criteria pollutant emissions from in-use off-road diesel-fueled vehicles. (Cal. Code Regs., tit.13, § 2449 et seq.)

CARB adopted the *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. The PSIP Regulation requires owners and operators of heavy-duty diesel vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate within the State of California to conduct annual smoke opacity inspections (or on-board diagnostic review for model year 2013 engines or newer)

of their vehicles by a CARB-approved trained smoke tester, using smoke test equipment and procedures that comply with the Society of Automotive Engineers (SAE) procedures J1667, "Snap Acceleration Smoke Test Procedure for Heavy-Duty Powered Vehicles. Owners and Operators must also keep records of this data and provide to CARB upon request. (Cal. Code Regs., tit. 13, §§ 2190-2194.)

Any person, business, or government agency who owns or operates an off-road vehicle with a diesel-fueled or alternative diesel-fueled off-road compression-ignition engine with a maximum power of 25 horsepower or greater or other specified off-road equipment, in California must meet the requirements of the Off-Road Regulation. (Cal. Code Regs., tit.13, § 2449, subd. (a).) These requirements include performance standards, a requirement to label each piece of equipment with a CARB-issued Equipment Identification Number (EIN), reporting requirements, the latter of which includes a requirement to notify CARB of the sale of a piece of equipment within 30 days, a requirement to disclose to the purchaser that the equipment is subject to the Off-Road Regulation, and a requirement to maintain records. (Cal. Code Regs., tit.13, § 2449, et seq.)

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 with 2000-2006 model year engines, must comply with the reporting requirements, and schedule to upgrade the engine(s), under the PM Best Alternative Control Technology (BACT) requirements as outlined by the compliance schedule by model year engine. (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 forty-thousand, seven hundred twenty-five dollars (\$40,725) for each strict liability violation of the PSIP Regulation. (Health & Saf. Code, § 43016; Cal. Code Regs., tit.13, § 2190 et seq.)

Failure to comply with the Off-Road Regulation's requirements is a violation of State law that may result in penalties of up to forty thousand, seven hundred twenty-five dollars (\$40,725) for each strict liability violations; for each day on which a violation occurs. (Cal. Code Regs., tit.13, § 2449; Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., 42400.1, 42400.2, 42402.3, and 42410, 43016.)

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) 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., 42400.1, 42400.2, 42402.3, and 42410.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Hal Hays and Subsidiaries was organized under the laws of California as a corporation and conducted business in the State of California.
- (6) Compliance Options. Hal Hays and Subsidiaries has elected to utilize the low-use vehicle exemption (Cal. Code Regs., tit. 13, § 2025(p)(4) in the Truck and Bus Regulation.
- (7) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) 00365, which was issued on February 9, 2021. CARB alleges that Hal Hays and Subsidiaries violated the PSIP Regulation by owning or operating heavy-duty vehicles with gross vehicle weight greater than 6,000 pounds in California and failing to provide records to CARB upon request, resulting in 66 violations, as outlined in NOV 00365.

CARB alleges that Hal Hays and Subsidiaries violated the Off-Road Regulation by failing to comply with the reporting requirements (Cal. Code Regs., tit. 13, § 2449(g), resulting in 13 violations, as outlined in NOV 00365.

CARB alleges that Hal Hays and Subsidiaries violated the Truck and Bus Regulation by failing to comply with the reporting requirements (Cal. Code Regs., tit. 13, § 2025(r)), compliance schedule (Cal. Code Regs., tit. 13, § 2025(e), (f), (g)) resulting in 13 violations, as outlined in NOV 00365.

CARB alleges that if the allegations described in paragraphs 1 through 7 were proven, civil penalties could be imposed against Hal Hays and Subsidiaries for each and every vehicle involved in the violations and each day.

- (8) Acknowledgment. Hal Hays and Subsidiaries admits to the facts in paragraphs 1 through 7, but denies any liability resulting from said allegations.
- (9) 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, Hal Hays and Subsidiaries 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 Hal Hays and Subsidiaries for the alleged violations referred to above in the Legal Background and Case Background, and Hal Hays and Subsidiaries' agreement to complete all terms and conditions set forth below, CARB and Hal Hays and Subsidiaries agree as follows:

- (10) Settlement Amount. Hal Hays and Subsidiaries shall pay a civil penalty of sixty-one thousand dollars (\$61,000.00 USD). Hal Hays and Subsidiaries shall make all payments in accordance with the payment schedule in Paragraph 11 (Payment Plan and Schedule).
- (11) Payment Plan and Schedule. Pursuant to this Settlement Agreement, Hal Hays and Subsidiaries shall make payments below:

Payment Due Date:	In the Amount Of and Payable To:
30 days from notification of signed settlement agreement	\$21,000 California Air Resources Board
60 days from notification of signed settlement agreement	\$20,000 California Air Resources Board
90 days from notification of signed settlement agreement	\$20,000 California Air Resources Board

- (12) Civil Penalty Payment Method. Hal Hays and Subsidiaries 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. Hal Hays and Subsidiaries 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 Hal Hays and Subsidiaries in accordance with Paragraph 17 (Notices).

- (13) Other Relief. Hal Hays and Subsidiaries shall comply with one of the following options: attend the California Council on Diesel Education and Technology (CCDET I) class, (SAE J1667 Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles) as described on the CCDET webpage www.ccdet.org/class-schedule/, or CARB's Online Training for Fleet Owners/Employees (MS529 Online Smoke-Test Training) at <https://ww2.arb.ca.gov/our-work/programs/heavy-duty-diesel-inspection-periodic-smoke-inspection-program/hdvp-psip>.
- (a) Hal Hays and Subsidiaries shall have the fleet maintenance manager (or equivalent) attend the CCDET I class or the CARB Online Training for Fleet Owners/Employees (MS529 Online Smoke-Test Training). Proof of completion of either course shall be to CARB within six months of the date of this Agreement and be maintained in each applicable employee's file for the term of his or her employment.
 - (b) If Hal Hays and Subsidiaries uses a contractor to perform the annual smoke opacity testing required under the PSIP Regulation, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET I or CARB course, Hal Hays and Subsidiaries shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET I course within the past four years. This proof of CCDET I completion shall be provided to CARB with PSIP Regulation records as required by this Agreement and be maintained with the annual PSIP Regulation records.
- (14) Other Relief. As is typically required, Hal Hays and Subsidiaries shall submit copies of all PSIP Regulation compliance records for 2021 after the close of the audit to CARB by January 31 of the following year. CARB acknowledges that Hal Hays and Subsidiaries has already submitted copies of all PSIP Regulation compliance records for year 2020 and has therefore complied with that requirement. CARB reserves the right to visit any fleet locations of Hal Hays and Subsidiaries at any time to conduct compliance audits for the HDVIP and PSIP Regulation, or any other applicable CARB program.
- (15) Acceleration. If any payment is more than thirty (30) calendar days late from the payment schedule deadline, the entire remaining balance is accelerated to become due and payable immediately without notice or demand.

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Notice of Violation: NOV 00365

- (16) Documents. Hal Hays and Subsidiaries 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 17 (Notices).
- (17) 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
Diesel Programs Enforcement Branch/Specialized Fleet Enforcement
Section
P.O. Box 2815
Sacramento, California 95812-2815 or El Monte, California 91731
Settlement_Agreement@arb.ca.gov

As to Hal Hays Construction, Inc., Heritage Transportation, Inc., Golden Bear Equipment, Inc., and Cal Pacific Constructors, Inc.:

Hal Hays Construction, Inc./Heritage Transportation, Inc./Golden Bear Equipment, Inc./Cal Pacific Constructors, Inc.
4181 Latham Street
Riverside, California 92501
lmcdaniel@halhays.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.

- (18) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Hal Hays and Subsidiaries shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (19) Repeat Violations. Hal Hays and Subsidiaries agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (20) 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 10 pages and 38 paragraphs.

- (21) **Binding Effect.** This Settlement Agreement binds Hal Hays and Subsidiaries, 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.
- (22) **Effective Date.** The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (23) **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.
- (24) **Severability.** Each provision of this Settlement Agreement is severable, and in the event 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.
- (25) **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.
- (26) **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.
- (27) **Not Tax Deductible.** For purposes of this Settlement Agreement, Hal Hays and Subsidiaries 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.
- (28) **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.

- (29) 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.
- (30) 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.
- (31) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (32) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (33) Release. In consideration of the full completion of civil penalty and all other undertakings above, CARB hereby releases Hal Hays and Subsidiaries 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.
- (34) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (35) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of forty thousand seven hundred and twenty-five dollars (\$40,725.00 USD) for each violation of the Health and Safety Code section 43016, the PSIP Regulation, (Cal. Code Regs., tit.13, § 2190 et seq) and the Off-Road Regulation (Cal. Code Regs., tit.13, § 2449 et seq.). The penalty of \$33,000 over an unspecified number of days of violation is for 33 noncompliant heavy-duty vehicles. The per unit penalty in this case is approximately \$500 per noncompliant vehicle. The penalty of \$6,500 over an unspecified number of days of violation is for 13 noncompliant off-road diesel-

fueled vehicle(s). The per unit penalty in this case is approximately \$500 per off-road diesel-fueled vehicle(s).

The per unit or per vehicle penalty in this case is a maximum of ten thousand dollars (\$10,000) per day under Health and Safety Code section, for violations of the Truck and Bus Regulation. (Cal. Code Regs., tit.13, § 2025.) The penalty of \$18,000 over an unspecified number of days of violation is for six noncompliant vehicles(s) with a 2000-2004, 2005-2006 model year engine(s) and a GVWR of greater than 14,000 pounds. The per unit penalty in this case is approximately \$3,000 per noncompliant vehicle. The penalty of \$6,500 over an unspecified number of days of violation is for seven noncompliant vehicles(s) that failed to comply with the reporting requirements. The per unit penalty in this case is approximately \$500 per noncompliant vehicle.

- (36) Emissions. The provisions pursuant to the PSIP regulation cited above do prohibit emissions above a specified level. Without information on usage and emission rates, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the vehicles did not meet the regulatory requirements, all emissions from them were excess and illegal.

The provisions pursuant to the Off-road Regulation cited above do not prohibit emissions above a specified level. Hal Hays and Subsidiaries could not provide information on engine usage and emission rates, so it is not practicable to quantify the excess emissions.

The provisions pursuant to the Truck and Bus Regulation 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 emissions from it were excess and illegal.

- (37) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in 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.

- (38) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Hal Hays and Subsidiaries 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/

Name: Ellen M. Peter

Title: Chief Counsel

Date: 8/9/2021

Hal Hays Construction, Inc., Heritage Transportation, Inc., Golden Bear Equipment, Inc., and Cal Pacific Constructors, Inc. (referenced herein as Hal Hays and Subsidiaries)

Signature: /S/

Name: Hal Hays

Title: Owner

Date: 7/20/2021