

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 H.E.R. Trucking, Inc. (H.E.R.), with its principal location at 715 South Maple Avenue, Montebello, California 90640 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

(1) Purpose.

- a. 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, 44011.6ast.)
- b. The California Health and Safety 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) Regulations.

- a. 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.
- b. 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.

- a. 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.)

- b. 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 1996 to 1999 model year engines by January 1, 2012, all 2000 to 2004 model year engines by January 1, 2013, and all 2005 and 2006 model year engines by January 1, 2014, must comply with the reporting requirements, schedule to upgrade the engine(s), or alternative compliance options. (Cal. Code Regs., tit.13, §2025.)

(4) Penalty Provisions.

- a. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to one thousand eight hundred dollars (\$1,800) for each strict liability violation of the PSIP Regulation, respectively, for each day in which the violation occurs. (Health & Saf. Code, §44011.6; Cal. Code Regs., tit.13, §2190 et seq.)
- b. 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; twenty-five thousand dollars (\$25,000) for negligent violations; and forty thousand dollars (\$40,000) for failing to take corrective action, and seventy-five thousand dollars (\$75,000) for willful and intentional 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, H.E.R., was organized under the laws of California as a corporation and conducted business in the State of California.

- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) Number 00316, which was issued on September 2, 2020. CARB alleges H.E.R. 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 conduct annual smoke opacity inspections, failing to review OBD data, failing to keep adequate records, failing to provide records to CARB upon request, resulting in 115 violations, as outlined in NOV #00316. CARB alleges H.E.R. violated the Truck and Bus Regulation by failing to comply with the compliance schedule (Cal. Code Regs., tit. 13, §2025(g), "Compliance Schedule by Engine Model Year for vehicles with GVWT greater than 26,000 pounds. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against H.E.R. for each and every vehicle involved in the violations and each day.
- (7) Acknowledgment. H.E.R. 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, H.E.R. 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 H.E.R. for the alleged violations referred to above in the Legal Background and Case Background, and H.E.R.'s agreement to complete all terms and conditions set forth below, CARB and H.E.R. agree as follows:

- (9) Settlement Amount. H.E.R. shall pay a civil penalty of sixty-seven thousand five hundred dollars (\$67,500.00 USD). H.E.R. shall make the first payment within 30 calendar days from the date CARB notifies H.E.R. of the full execution of the Settlement Agreement, in accordance with the payment schedule in Paragraph 10 (Payment Plan and Schedule)].
- (10) Payment Plan and Schedule. Pursuant to this Settlement Agreement, H.E.R. shall make payments below.

Payment Due Date:	In the Amount Of and Payable To:
30 Days	\$13,500.00 California Air Resources Board

Payment Due Date:	In the Amount Of and Payable To:
60 Days	\$13,500.00 California Air Resources Board
90 Days	\$13,500.00 California Air Resources Board
120 Days	\$13,500.00 California Air Resources Board
150 Days	\$13,500.00 California Air Resources Board

- (11) Civil Penalty Payment Method. H.E.R. 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. H.E.R. 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 H.E.R. in accordance with Paragraph 15 (Notices).
- (12) Other Relief. H.E.R. 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. H.E.R. 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 submitted to CARB within six months of the date of this Settlement Agreement and be maintained in each applicable employee's file for the term of his or her employment.
 - b. If H.E.R. 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, H.E.R. 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 Settlement Agreement and be maintained with the annual PSIP Regulation records.
- (13) Other Relief. H.E.R. shall submit future PSIP compliance records for 2022 and 2023. PSIP records for all applicable vehicles shall be submitted to CARB by January 31 of the following year. Fleet has removed the non-compliant vehicles

- cited in Truck and Bus Regulation after initiation of the audit investigation.
- (14) 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.
- (15) Documents. H.E.R. 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 15 (Notices).
- (16) 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
Statewide Truck and Bus Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to H.E.R.:

H.E.R. Trucking, Inc.
715 S. Maple Ave.
Montebello, California 90640
elsahertrucking@gmail.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.

- (17) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, H.E.R. shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (18) Repeat Violations. H.E.R. agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (19) 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 8 pages and 36 paragraphs.

- (20) Binding Effect. This Settlement Agreement binds H.E.R., 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.
- (21) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (22) 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.
- (23) 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.
- (24) 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.
- (25) 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.
- (26) Not Tax Deductible. For purposes of this Settlement Agreement, H.E.R. 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.
- (27) 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.
- (28) 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.

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

PENALTY BASIS

- (34) Per Unit Penalty.
- a. The per unit or per vehicle penalty in this case is a maximum of one thousand eight hundred dollars (\$1,800) per day for each day the vehicle in violation of the Health and Safety Code section 44011.6 and PSIP Regulation. (Cal. Code Regs., tit.13, §2190 et seq.) The penalty of \$52,500.00 over an unspecified number of days for PSIP violations is for 115 diesel vehicles that were not tested. The per unit penalty in this case is approximately \$456 per Periodic Smoke Inspection Program violation.

- b. The penalty of \$ 15,000.00 over an unspecified number of days of violation is for five noncompliant heavy-duty vehicles. The per unit penalty in this case is approximately \$3,000 per Truck and Bus Regulation noncompliant vehicle.

- (35) Emissions. The provisions 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 the emissions from it were excess and illegal.
- (36) 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.
- (37) Confidential Business Information. CARB based this penalty in part on confidential business information provided by H.E.R. 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: _____

Name: Ellen M. Peter

Title: Chief Counsel _____

Date: _____

H.E.R. Trucking, Inc. Settlement Agreement
Notice of Violation: 00316

H.E.R. Trucking, Inc.

Signature: _____

Name: _____

Title: _____

Date: _____