

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 Allied Waste of California, Inc., Allied Waste Transportation, Inc., Bay Leasing Company, Inc., BFI Waste Systems of North America, LLC, Browning-Ferris Industries of California, Inc., Consolidated Disposal Service, L.L.C., Delta Container Corporation, Golden Bear Transfer Services, Inc., Independent Trucking Company, International Disposal Corp. of California, N Leasing Company, LLC, Rainbow Disposal Co., Inc., Ramona Landfill, Inc., Solano Garbage Company, Sunrise Sanitation Service, Inc., Tayman Industries, Inc., and West Contra Costa Sanitary Landfill, Inc. (collectively, the Companies), with their principal location at 18500 North Allied Way Phoenix, Arizona 85054 (collectively together, CARB and the Companies are known as the "Parties," or individually, "Party").

LEGAL BACKGROUND

(1) Purpose.

- a. The California Health and Safety Code mandates the reduction of the 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.)
- b. The California Health and Safety Code mandates the reduction of the emission of 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 PM.
- c. The Health and Safety Code requires CARB to identify TACs. (Health & Saf. Code §§ 39002, et seq., 39650-39675.) CARB must then adopt emission standards for vehicular sources to achieve the maximum possible reduction in public exposure to TACs. (Health & Saf. Code, § 39667.) CARB has determined that particulate matter (PM) from diesel-fueled engines is a TAC. In-use on-road diesel-fueled 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 (PSIP Regulation) (Cal. Code Regs., tit. 13, §§ 2190 et seq.) to reduce excess smoke opacity emissions from heavy-duty vehicles.

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- b. CARB adopted the *In-Use Off-Road Diesel-Fueled Fleet Regulation* (Off-Road Regulation) (Cal. Code Regs., tit.13 § 2449 et seq.) to reduce diesel PM and criteria pollutant emissions from in-use off-road diesel-fueled vehicles.
- c. 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) (Cal. Code Regs., tit.13, § 2025) to reduce diesel PM and criteria pollutant emissions from on-road heavy-duty diesel-fueled vehicles.
- d. CARB adopted the *"Solid Waste Collection Vehicles and Heavy Cranes"* Regulation (SWCV Regulation) (Cal. Code Regs., tit. 13, §§ 2021 et seq.) to reduce diesel PM from on-road diesel-fueled heavy-duty residential or commercial solid waste collection vehicles and on-road heavy cranes.

(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, 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

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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.)

- c. 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 1993-2006 model year engines must comply with the reporting requirements, schedule to upgrade the engine(s), and PM Best Alternative Control Technology (BACT) requirements, as outlined in the compliance schedule by model year engine. (Cal. Code Regs., tit. 13, § 2025.)
- d. Owners and sellers of heavy cranes and solid waste collection vehicles (including on-road diesel-fueled heavy-duty residential or commercial solid waste collection vehicles with 1960 to 2006 model year engines and a manufacturer's gross vehicle weight rating greater than 14,000 pounds) must install Particulate Matter (PM) Best Available Control Technology (BACT) or comply with the low use exemption, report the vehicles into the Truck Regulation Upload and Compliance System (TRUCRS) database, and maintain records. These requires also apply to any person, business, or federal government agency that owns or operates, leases, or rents, diesel-fueled single-engine on-road heavy cranes with a manufacturer's gross vehicle weight rating of 54,000 pounds or more that operate in California. (Cal. Code Regs., tit. 13, §§ 2021 et seq.)

(4) Penalty Provisions.

- a. Failure to comply with the regulatory requirements is a violation of State law that may result in penalties up to forty thousand, seven hundred

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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.)

- b. 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 violation 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.)
- c. Failure to comply with the regulatory requirements of the Truck and Bus Regulation is a violation of State law that may result in penalties up to ten thousand dollars (\$10,000) for strict liability violations for each day on which a 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.)
- d. Failure to comply with the regulatory requirements of the SWCV Regulation is a violation of State law that may result in penalties up to ten thousand dollars (\$10,000) for strict liability violations for each day on which a 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, the Companies were organized under the laws of California as a corporation or limited liability company and/or conducted business in the State of California.
- (6) Compliance Options. The Companies have elected to utilize the low-use vehicle exemption in the Truck and Bus Regulation (Cal. Code Regs., tit. 13, § 2025(p)(4)) to come into compliance with the Truck and Bus Regulation.
- (7) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) 00304, which was issued on February 9, 2021.

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- a. CARB alleges that the Companies violated the PSIP Regulation by owning or operating heavy-duty vehicles with gross vehicle weights greater than 6,000 pounds in California and failing to provide records to CARB upon request, resulting in 143 violations, as outlined in NOV 00304.
- b. CARB alleges that the Companies violated the Off-Road Regulation by failing to comply with the reporting requirements (Cal. Code Regs., tit. 13 § 2449(g)), resulting in 167 violations, as outlined in NOV 00304.
- c. CARB alleges that the Companies violated the Truck and Bus Regulation by failing to comply with the reporting requirements (Cal. Code Regs., tit. 13, § 2025(r)) and the compliance schedule for truck turnover (Cal. Code Regs., tit. 13, § 2025(e), (f), (g)), resulting in 30 of violations, as outlined in NOV 00304.
- d. CARB alleges that the Companies violated the SWCV Regulation by failing to install compliant BACT (Cal. Code Regs., tit. 13, § 2021 et seq.), resulting in 17 violations, as outlined in NOV 00304.

CARB alleges that if the allegations described in paragraphs 1 through 7 were proven, civil penalties could be imposed against the Companies for each and every vehicle involved in the violations and for each day on which a violation occurred.

- (8) Acknowledgment. The Companies admit to the facts in paragraphs 1 through 7, but deny 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, the Companies have taken, or agree to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of the allegations herein.

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TERMS AND CONDITIONS

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

- (10) Settlement Amount. The Companies and their subsidiaries shall jointly pay CARB a civil penalty of two hundred eleven thousand, two hundred fifty dollars (\$211,250 USD) within 30 days from the date CARB notifies the Companies of the full execution of the Settlement Agreement and provides the Companies a copy of the executed Settlement Agreement.
- (11) Civil Penalty Payment Method. The Companies 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. The Companies are 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 the Companies in accordance with Paragraph 16 (Notices).
- (12) Other Relief. The Companies shall attend and complete one of the following: 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) The Companies shall have their fleet maintenance manager(s) (or equivalent(s)) attend the CCDET I class or the CARB Online Training for Fleet Owners/Employees (MS529 Online Smoke-Test Training). The Companies shall submit proof of completion of either course to CARB within six months of the date of this Agreement, and shall maintain such proof of completion in each applicable employee's file for the term of his or her employment with the Companies.

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- (b) If the Companies use a contractor to perform the annual smoke opacity testing required under the PSIP Regulation, in addition to having the Companies' fleet maintenance manager(s) (or equivalent(s)) attend the CCDET I or CARB course, Allied Waste of California, Inc., the Companies shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET I course within the past four years. The Companies shall provide proof of CCDET I completion by the contractor to CARB with the PSIP Regulation records, and shall maintain proof of CCDET I completion by the contractor with the annual PSIP Regulation records.
- (13) Other Relief. The Companies shall submit copies of all PSIP Regulation compliance records for 2021 after the close of the audit to CARB by January 31, 2022. CARB acknowledges that the Companies have already submitted copies of all PSIP Regulation compliance records for year 2020 to CARB, and have therefore complied with that requirement. CARB reserves the right to visit any fleet location of any of the Companies at any time to conduct compliance audits for the HDVIP Regulation, the PSIP Regulation, or any other applicable CARB program.
- (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. The Companies shall promptly sign and date this Settlement Agreement, and 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 16 (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 following address or email of the applicable Party:

As to CARB:
California Air Resources Board
Enforcement Division / Settlement Agreements
Diesel Programs Enforcement Branch/Specialized Fleet Enforcement
Section
P.O. Box 2815

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Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to the Companies:
Mr. Kevin M. Divincenzo, Area Director
Republic Services
3260 Blume Drive, Suite 200
Richmond, California 94806
KDivincenzo@republicservices.com

As to Legal Representation for the Companies:
Thomas M. Bruen
1990 North California Boulevard, Suite 20
Walnut Creek, California 94596
tbruen@tbsglaw.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above, without the need to modify this Settlement Agreement. 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, the Companies shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (18) Repeat Violations. The Companies agree to comply with all regulatory requirements, and acknowledge 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 14 pages and 37 paragraphs.
- (20) Binding Effect. This Settlement Agreement binds the Companies and any principals, officers, receivers, trustees, successors and assignees, and subsidiary

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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, the Companies shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting their 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

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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 valid signatures.
- (32) Release. In consideration of the full completion of payment of the civil penalty and all other undertakings above, CARB hereby releases the Companies and its principals, officers, receivers, trustees, successors and assignees, and 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 represent that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (34) Per Unit Penalty.
- a. Periodic Smoke Inspection Program 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 Health and Safety Code section 43016 (the PSIP Regulation) (Cal. Code Regs., tit.13,

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§ 2190 et seq). The penalty of \$71,500 over an unspecified number of days of violation is for 143 noncompliant heavy-duty vehicles. The per-unit penalty in this case is approximately \$500 per noncompliant vehicle.

- b. Off-Road Regulation 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 Health and Safety Code section 43016 (Off-Road Regulation) (Cal. Code Regs., tit.13, § 2449 et seq.). The penalty of \$41,750 over an unspecified number of days of violation is for 167 noncompliant off-road diesel-fueled vehicles. The per-unit penalty in this case is approximately \$250 per off-road diesel-fueled vehicle.
- c. Truck and Bus Regulation Penalty. The per-unit or per-vehicle penalty in this case is a maximum of ten thousand dollars (\$10,000.00 USD) 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 over an unspecified number of days of violation is for four noncompliant vehicles with 2001 to 2006 model year engines and a GVWR of greater than 14,000 pounds. The per-unit penalty in this case is \$3,000 per noncompliant vehicle. The penalty of \$33,000 over an unspecified number of days of violation is for twenty-two noncompliant vehicles with pre-1994 to 2006 model year engines and a GVWR of greater than 14,000 pounds. The per-unit penalty in this case is approximately \$1,500 per self-disclosed noncompliant vehicle violation. The penalty of \$2000 over an unspecified number of days of violation is for four noncompliant vehicles that failed to comply with the reporting requirements. The per-unit penalty in this case is approximately \$500 per noncompliant vehicle.
- d. SWCV Regulation Penalty. The per-unit or per-vehicle penalty in this case is a maximum of ten thousand dollars (\$10,000.00 USD) per day under Health and Safety Code section 39674, for violations of the SWCV Regulation. (Cal. Code Regs., tit.13, § 2021 et seq.) The penalty of \$51,000 over an unspecified number of days of violation is for 17 noncompliant vehicles with 1979 to 2006 model year engines and a

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GVWR of greater than 26,000 pounds. The per-unit penalty in this case is approximately \$3,000 per noncompliant vehicle.

(35) Emissions.

- a. The PSIP regulation 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 of the emissions from it were excess and illegal.
- b. The Off-road Regulation provisions cited above do not prohibit emissions above a specified level. The Companies could not provide information on engine usage and emission rates, so it is not practicable to quantify the excess emissions. However, since CARB has alleged that the vehicles did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- c. The Truck and Bus Regulation 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.
- d. The SWCV Regulation 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.

- (36) Aggravating and Mitigating Factors. The penalties in this matter were determined by considering 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; the nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative

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efforts taken; the innovative nature and 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 with consideration of 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.

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- (37) Confidential Business Information. CARB based this penalty, in part, on confidential business information provided by the Companies 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: Richard W. Corey

Title: Executive Officer

Date: February 14, 2022

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Signature: /S/

Name: Michael Caprio

Title: Vice President

Date: January 13, 2022