

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 EC Applications, LLC, with its principal location at 901 E. Orangethorpe Avenue, Anaheim, California 92801 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) **Purpose.** The California Health and Safety Code mandates the reduction of the emission of toxic air contaminants (TAC), oxides of nitrogen (NOx), 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.
- (2) **Regulation.** 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.)
- (3) **Regulatory Provisions.** 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 an in-use compliance requirement ban on adding Tier 0s, Tier 1s, and Tier 2s (Cal. Code Regs., tit.13, § 2449, subd. (d)(6)).
- (4) **Penalty Provisions.** 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-two thousand four hundred fifty dollars (\$42,450.00 USD) per violation for strict liability violations; for each noncompliant off-road diesel-fueled vehicle(s). (Cal. Code Regs., tit.13, § 2449; Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., 42410, and 43016.)

CASE BACKGROUND

- (5) **Corporate Entity.** At all relevant times, EC Applications, LLC was organized under the laws of the California as a limited liability company and conducted business in the State of California.
- (6) **Allegations.** On or about January 5, 2023, EC Applications, LLC informed CARB that they would be in violation of the Off-Road Regulation after adding three pieces of banned or altered equipment to its fleet, identified by the following EINs: JU7W85, SL7D73, and EA6S48. (Cal. Code Regs., tit. 13, § 2449, subd. (d)(6).) ECA has not operated the equipment and has sought a settlement in advance. CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against EC Applications, LLC for each and every Off-Road vehicle in violation, for each day of the violation.

- (7) Acknowledgment. EC Applications, LLC admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) Unique Circumstances. This Settlement Agreement does not affect CARB's ability to take enforcement action against, or to impose penalties on EC Applications, LLC for any violations other than those set out in paragraphs 6 and 7. In this case, EC Applications, LLC promptly and fully cooperated with CARB, notified CARB in advance, and sought help complying with the Off-Road Regulation. Further, the circumstances of the violations here were unique, as described hereafter:
- a. The equipment would be performing work under the Purple Line Extension – Section 3 Stations No. C1152, and Westside Purple Line Extension Project Agreement 10862600-0010R, Section 1 Agreement Number 098-012-112 (collectively, "Project").
 - b. The tunnels and stations of the Project were classified as "gassy" by the California Department of Industrial Relations Division of Occupational Safety and Health (CAL/OSHA), in accordance with California Code of Regulations, title 8, section 8422 (tunnel classifications), Underground Classification Numbers C114-037-16T. There is evidence that the "gassy" classification makes it unsafe to operate compliant off-road equipment on the Project, making it necessary for EC Applications, LLC to add approximately three pieces of banned and altered equipment to its fleet, in violation of the Off-Road Regulation, to meet the equipment operation requirements in California Code of Regulations, title 8, section 8425, and be able to complete the Project. The equipment needs could not be supplied with unaltered or unbanned Tier 2, 3, or 4 engines, and that failure to institute these modifications would have resulted in a serious safety hazard.
 - c. The altered and banned engines EC Applications, LLC needs to use in their fleet, as described in paragraph 6 for this Project, were the cleanest Mine Safety and Health Administration (MSHA)-approved engines available or technically feasible for use in the equipment needed for the Project.
- (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, EC Applications, LLC 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 EC Applications, LLC for the alleged violations referred to above in the Legal Background and Case Background, and EC Applications, LLC's agreement to complete all terms and conditions set forth below, CARB and EC Applications, LLC agree as follows:

- (10) Stipulated Suspended Settlement Amount. EC Applications, LLC agrees to a suspended penalty of one thousand dollars (\$1,000.00 USD) for these alleged violations. If EC Applications, LLC fails to comply with any obligations or terms of this Settlement Agreement, as determined by CARB, the penalty amount of \$1,000.00 for the violations shall become due and payable by EC Applications, LLC within 30 days of notification by CARB, for deposit into CARB's Air Pollution Control Fund for the purpose of carrying out its functions and duties.
- (11) Mitigation Plan. As a condition of this Revised Settlement Agreement, EC Applications, LLC shall do the following:
 - a. Offset and/or mitigate all oxides of nitrogen (NOx) and particulate matter (PM) emissions associated with use of the equipment with the following EINs, which are equipped with banned Tier 0 engines or an altered Tier 4i engine: JU7W85, SL7D73 and EA6S48. CARB will provide EC Applications, LLC with an estimate of these emissions within 60 calendar days of executing this Settlement Agreement. EC Applications, LLC shall perform the mitigation measures it submitted to CARB in its Mitigation Plan, Attachment A to this Settlement Agreement, by December 31, 2023, which will mitigate all excess NOx emissions CARB calculates. These mitigation measures and their implementation must be surplus to requirements of any federal, State, or local law, rule, or regulation; may not be used to receive credit under any federal, State, or local law, rule, or regulation; and may not violate any federal, State, or local law, rule, or regulation. EC Applications, LLC shall not implement mitigation measures other than those listed in Attachment A, without advance written CARB approval. Once EC Applications, LLC receives written CARB approval of any mitigation measure, it shall begin implementing it immediately, unless CARB agrees otherwise in writing;
 - b. Except as otherwise allowed by this Settlement Agreement, comply with all requirements of the Off-Road Regulation, including for the equipment listed in Table 1, below, including but not limited to: annual reporting, reporting changes to the fleet, and submittal of the Responsible Official Affirmations of Reporting (ROAR) form;
 - c. Not add to and/or operate in their fleet any banned equipment other than those listed in Table 1, below;

- d. Not add, operate, or modify any off-road equipment, including in this fleet, other than those pieces of equipment listed in Table 1, below, unless it meets the requirements of the Off-Road Regulation. If any changes to Table 1 are necessary, EC Applications, LLC shall notify CARB of any proposed changes to this Settlement Agreement, including adding, removing or changing any of the equipment listed in Table 1 in writing no later than 10 calendar days after discovering that any such modification is necessary, and show the need for each such modification, including safety issues, if such modification is not instituted and the unavailability of any other equipment to do the work needed; and shall not make any such changes, including bringing or modifying any equipment other than that in Table 1 into the State, including by adding vehicles to the fleet, or operating such equipment without CARB's prior written approval and implementing CARB's associated direction;
- e. Make the proper modifications to upgrade the equipment and/or engines used on the Project to cleaner equipment and/or engines, or make modifications to the equipment and/or engines used on the Project that result in cleaner operation of the equipment, as soon as practicable after EC Applications, LLC, CARB, or any other relevant agency, including, but not limited to, MSHA or CAL/OSHA, at any time identifies cleaner equipment that can be used for the project identified; and keep CARB informed of available modifications and progress toward making any required modifications, as applicable;
- f. Immediately, upon completion of the Project, or removal of the Project's "gassy" designation of the Project, take the following actions with regard to all equipment in Table 1, below:
 - i. Remove it from operation and move it out of the State of California, or return it to the equipment's original specifications, except that the equipment with the following EINs must immediately be moved out of the State of California after Project completion or removal of the Project's "gassy" designation: JU7W85, SL7D73, and EA6S48;
 - ii. EC Applications, LLC may not receive any credit under the Off-Road Regulation or any other federal, State, or local law, rule, or regulation for the removal, repower, or modification of the equipment in Table 1, below, from the modified specifications allowed under this Settlement Agreement; and
 - iii. In lieu of removing the equipment in Table 1, below, from operation and moving it out of the State of California, or returning it to the equipment's original specifications, upon

completion or re-designation as not “gassy” of the Project EC Applications may consider selling some or all of the equipment in Table 1, but only to another entity working on another section of the Purple Line Extension, if it is still classified as “gassy,” but shall first notify CARB of their intent to sell in writing and in advance, and shall not proceed with the sale of any Table 1 equipment without CARB’s advance written approval and completion of any CARB requirements as to the sale, such as complete reporting, consistent with CARB regulation; and the fleet to which they sell must be in compliance or be brought into compliance before the sale takes place;

- g. Notify CARB within 10 calendar days of a CAL/OSHA designation of Underground Classification Numbers C114-037-16T to a classification other than “gassy;” and
- h. If a designation of Underground Classification Numbers C114-037-16T, in whole or in part, to a classification other than “gassy” occurs prior to completion of the, EC Applications, LLC must follow the requirements in Paragraph 11 (Mitigation Plan), subparagraphs f and g, of the Terms and Conditions of this Settlement Agreement, and compliant, un-modified equipment must be used to complete that portion of the contract, unless evidence is presented to CARB that satisfies CARB that it is not safe to do so.

Table 1: Banned and/or Modified In-Use Off-Road Equipment

Fleet Name	Fleet ID	Equipment Identification Number (EIN)
EC Applications, LLC	197241	JU7W85
EC Applications, LLC	197241	SL7D73
EC Applications, LLC	197241	EA6S48

- (12) Agreement Period. EC Applications, LLC agrees that this Settlement Agreement shall be in effect at all times when EC Applications, LLC is working on the Project, the Underground Classification Numbers C114-037-16T is designated as “gassy,” and CARB has not been notified of any designation change to one other than “gassy” that no longer requires the use of the equipment in Table 1, above; and shall remain in effect for 30 days after completion of EC Applications, LLC’s work on the Project, or designation of the Underground Classification Numbers C114-

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037-16T as “non-gassy” and compliance with Paragraph 11 (Mitigation Plan), subparagraphs f and g, of the Terms and Conditions of this Settlement Agreement, whichever is later. This shall be known as the Agreement Period.

- (13) Civil Penalty and Mitigation Payment Method. EC Applications, LLC shall pay the civil penalty and mitigation by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. EC Applications, LLC 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 and mitigation 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 EC Applications, LLC in accordance with Paragraph 16 (Notices).
- (14) Compliance. EC Applications, LLC shall continue to comply with the Off-Road Regulation at all times during the Agreement Period, other than as allowed under this Settlement Agreement. If EC Applications, LLC become noncompliant with the Off-Road Regulation, other than as allowed under this Settlement Agreement, at any time during the Agreement Period, they must submit and, if approved by CARB, implement a compliance plan within 30 calendar days of becoming noncompliant to ensure that the Companies comply with all provisions of the Off-Road Regulation
- (15) Documents. EC Applications, LLC shall promptly email the signed and dated Settlement Agreement, with Attachment A, Mitigation Plan for CARB approval directly to the CARB Investigator handling this Settlement, or to the email listed in Paragraph 16 (Notices). Alternatively, EC Applications, LLC may mail the signed and dated Settlement Agreement with Attachment A, Mitigation Plan, to the address listed in Paragraph 16 (Notices). If a violation of this Settlement Agreement occurs and payment becomes due under Paragraph 10 (Stipulated Suspended Settlement Amount) and Paragraph 13 (Mitigation Plan), at the time of payment, EC Applications, LLC shall mail a copy of proof of payment of the penalty and a copy of the Payment Transmittal Form to CARB at the address 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 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
Settlement_Agreement@arb.ca.gov

As to EC Applications, LLC:
EC Applications, LLC
Mr. Bob Motis
901 E. Orangethorpe Avenue
Anaheim, California 92801
bmotis@ecapplications.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, EC Applications, LLC shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (18) Repeat Violations. EC Applications, LLC 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 14 pages and 37 paragraphs.
- (20) Binding Effect. This Settlement Agreement binds EC Applications, LLC, 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.

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- (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) 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.
- (27) 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.
- (28) 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.
- (29) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (30) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (31) Release. In consideration the full completion of mitigation and all other undertakings above within the Agreement Period, CARB hereby releases EC Applications, LLC 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.
- (32) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (33) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of forty-two thousand four hundred fifty dollars (\$42,450.00 USD) per violation for strict liability violations per day under Health and Safety Code section 43016 for violations of the Off-Road Regulation. (Cal. Code Regs., tit.13, § 2449 et seq.) The penalty of \$1,000.00 is for 1 piece of equipment over an unspecified number of days of violation. The penalty was reduced because EC Applications, LLC was fully cooperative with the investigation, self-reported to and consulted with CARB on how to come back into compliance with the Off-Road Regulation, and due to the unique circumstances.
- (34) Emissions. The provisions cited above do prohibit emissions above a specified level. In most cases, including this case, it is not practicable to quantify these emissions because the information necessary to do so, such as emission rates and time of use, is not available. Excess emissions were estimated in this case for the purposes of mitigation only, based on emission rates and average time of use for similar equipment.
- (35) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors and 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; the violator's compliance history; preventative efforts taken by the violator, including action taken to mitigate the violation; 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; financial burden to the violator; and whether the violator voluntarily disclosed the violation. 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 in 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.
- (36) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by EC Applications, LLC or confidential settlement communications.
- (37) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
 - (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against EC Applications, LLC with respect to all

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matters not expressly resolved in this Settlement Agreement.

Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against EC Applications, LLC with respect to:

- (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by EC Applications, LLC to CARB.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
 - (v) Any criminal liability.
 - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, EC Applications, LLC shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of EC Applications, LLC or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against EC Applications, LLC, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. EC Applications, LLC is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; EC Applications, LLC's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that EC Applications, LLC's compliance with any aspect of

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this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Ellen M. Peter

Title: Chief Counsel

Date: August 2, 2023

EC Applications, LLC

Signature: /S/

Name: Bob Motis

Title: Vice President

Date: May 26, 2023

ATTACHMENT A

MITIGATION PLAN

EIN	Horsepower	Hours of Use	Load Factor	NOx	PM	NOx	PM	NOx	PM
JU7W85	120	600.0	0.4	6.5	0.30	0.26	0.009	398.4	18.7
SL7D73	43	3,500.0	0.31	5.26	0.48	2.75	0.009	257.9	48.4
EA6S48	30	500.0	0.31	5.26	0.48	2.75	0.009	25.7	4.8
							Pounds	682.0	71.9
							Tons	0.3	0.0

Mitigation #1: Welding Equipment										
					Emission Factor NOx	Emission Factor PM	NOx Emissions	NOx Emissions	PM Emissions	PM Emissions
Equipment Type	Number	HP	Hours of Use	Load Factor	(g/bhp-hr)	(g/bhp-hr)	(lbs)	(tons)	(lbs)	(tons)
Welding Equipment	4	13.1	26,000	0.45	4.63	0.48	1,563.08	0.78	162.05	0.08
Note: Load Factor Source = Carl Moyer Guidelines, Table D-7.										
Note: Emission Factor Source = Carl Moyer Guidelines, Table D-9 for Tier 2 Engines in the 25 - 49 hp Category.										
Alternatively, could use Engine Standards of 5.6 g/bhp-hr for NOx and 0.6 g/bhp-hr for PM based on Tier 2, 11 - 24 hp Category.										
Mitigation Comparison										
		Required	Proposed	Sufficient?						
	NOx (lbs)	682.03	1,563.08	Yes						
	PM (lbs)	71.93	162.05	Yes						