

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 Hettinga Transportation Inc., with its principal location at 11710 Road 136, Pixley, California 93256 (collectively, 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. CARB adopted the "Heavy-Duty Diesel Smoke Emission Testing, and Heavy-Duty Vehicle Emission Control Inspections" Regulation (Cal. Code Regs., tit. 13, §§ 2180-2189) (HDVIP Regulation) to reduce excess smoke emissions from heavy-duty vehicles.
- c. The California Health and Safety Code mandates the reduction of emission of air pollution from motor vehicles. (Health & Saf. Code §§ 43000, 43000.5, 43011.)

(2) Regulation.

- 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. CARB adopted the "Heavy-Duty Diesel Smoke Emission Testing, and Heavy-Duty Vehicle Emission Control Inspections" Regulation (Cal. Code Regs., tit. 13, §§ 2180-2189) (HDVIP Regulation) to reduce excess smoke emissions from heavy-duty vehicles.
- c. CARB adopted the "Add-On Parts and Modified Parts" Regulation (Cal. Code Regs., tit. 13, §§ 2220-2225) (Aftermarket Parts Regulation) to ensure that these vehicle add-on and modified parts have been evaluated by CARB and do not increase vehicle emissions.

(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 shall also keep records of this data and provide to CARB upon request. (Cal. Code Regs., tit. 13, §§ 2190-2194.)
- b. The HDVIP Regulation prohibits the operation of heavy-duty vehicles in California that exceed the applicable smoke opacity standards, as well as vehicles that are inadequately maintained or have defective emission control components. It authorizes CARB to inspect on-road heavy-duty vehicles for excess smoke emissions and engine tampering, and to issue citations to the vehicle owner, who shall repair the engines exceeding the smoke opacity standards, perform post-repair opacity testing, and submit proof of the repairs along with assessed penalties. Owners of heavy-duty vehicles must also affix an Emission Control Label (ECL). (Cal. Code Regs., tit. 13, §§ 2180-2189.)
- c. The Aftermarket Parts Regulation and Vehicle Code prohibit any person or company doing business in California from advertising, offering for sale, selling, or installing any device, apparatus, or mechanisms that alters or modifies the original design or performance of a motor vehicle air pollution control device, unless it is exempted from Vehicle Code section 27156. (Cal. Code Regs., tit. 13, § 2220; Vehicle Code § 27156.) The Executive Officer may issue a cease-and-desist order and enjoin the sale, import, install, advertising, supply, distribution, or install in California of any add-on or modified part that does not comply with the Aftermarket Parts Regulation. (Cal. Code Regs., tit. 13, § 2225; Health & Saf. Code § 43017.) The sale of this product may also be illegal nationwide under the federal Clean Air Act (42 U.S.C., § 7522(a)(3).

(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-five thousand, five hundred and sixty-three dollars (\$45,563.00 USD) 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 HDVIP regulatory requirements is a violation of state law that may result in penalties up to one thousand eight hundred dollars (\$1,800.00 USD) for each strict liability violation, for each day in which the violation occurs. (Health & Saf. Code, § 44011.6; Cal. Code Regs., tit. 13, § 2185.)
- c. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to one thousand five hundred dollars (\$1,500.00 USD) for each violation of the Vehicle Code and forty-two thousand four hundred fifty dollars (\$42,450.00 USD) per action, for strict liability violations, respectively, for each noncompliant add-on or modified part. (Cal. Code Regs., tit. 13, §§ 2220-2225; Health & Saf. Code, §§ 43008.6, 43016; Vehicle Code § 27156.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Hettinga Transportation Inc. 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) I00674, which was issued on February 21, 2023. CARB alleges that Hettinga Transportation Inc. violated the following regulations, as outlined in the NOV:
 - a. 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.
 - b. The HDVIP Regulation by failing to provide evidence that one of its vehicles have ECLs attached to the engines of the heavy-duty vehicles for its fleet of heavy-duty vehicles, resulting in one ECL violations, as outlined in Notice of Violation NOV I00674.
 - c. The Aftermarket Parts Regulation by installing unauthorized emission components resulting in seven violations, as outlined in NOV I00674.

CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against Hettinga Transportation Inc. for each and every vehicle involved in the violations and each day.

- (7) Acknowledgment. Hettinga Transportation Inc. 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, Hettinga Transportation Inc. 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 Hettinga Transportation Inc. for the alleged violations referred to above in the Legal Background and Case Background, and Hettinga Transportation Inc.'s agreement to complete all terms and conditions set forth below, CARB and Hettinga Transportation Inc. agree as follows:

- (9) Settlement Amount. Hettinga Transportation Inc. shall pay a civil penalty of eighty-two thousand dollars (\$82,000.00 USD). Hettinga Transportation Inc. shall make all payments in accordance with the payment schedule in Paragraph 10 (Payment Plan and Schedule)].
- (10) Payment Plan and Schedule. Pursuant to this Settlement Agreement, Hettinga Transportation Inc. shall make payments below. First payment shall be due within thirty (30) calendar days from the date CARB notifies Hettinga Transportation Inc. of full execution of this Settlement Agreement.

Payment Due Date:	In the Amount of and Payable To:
30 Days	\$41,000.00 California Air Resources Board
365 Days	\$41,000.00 California Air Resources Board

- (11) Civil Penalty and Mitigation Payment Method. Hettinga Transportation Inc. shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to the "California Air Resources Board," using instructions provided separately by CARB in a Payment Transmittal Form. Hettinga Transportation Inc. is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. At the time payment is made, Hettinga Transportation Inc. shall provide CARB with proof of payment, including a copy of the Payment Transmittal Form, to the email address provided in Paragraph 16 (Notices). 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 shall provide notice to Hettinga Transportation Inc. in accordance with Paragraph 16 (Notices).

(12) Compliance Plan.

- a. Hettinga Transportation Inc. shall attend and complete one of the following: the Clean Truck Check, formerly Heavy-Duty Inspection and Maintenance, Credentialed Tester Training class
<https://ww2.arb.ca.gov/our-work/programs/inspection-and-maintenance-program/hd-im-tester-training-course-and-exam>.
- b. Hettinga Transportation Inc. shall have their fleet maintenance manager(s) (or equivalent(s)) attend the Clean Truck Check Credentialed Tester Training class. The Companies shall submit proof of completion of the course to CARB within six months of the date of this Settlement 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.
- c. In the event Hettinga Transportation Inc. uses a contractor to comply with the Clean Truck Check in addition to having the Companies' fleet maintenance manager(s) (or equivalent(s)) attend the Clean Truck Check Credentialed Tester Training, Hettinga Transportation Inc., shall obtain proof that the contractor's staff conducting the opacity test or on-board diagnostics test completed the Clean Truck Check Credentialed Tester Training within the past two years.
- d. Hettinga Transportation Inc. shall provide 2024 PSIP records or pass Clean Truck Check for all vehicles subjected to those regulations depending on applicability.
- e. For the seven vehicles not in compliance with the Aftermarket Parts Regulation, Hettinga Transportation Inc. shall submit to CARB and implement a Compliance Plan within 15 calendar days to ensure that Hettinga Transportation Inc. complies with all provisions of the laws and regulations outlined in the Legal Background and where applicable, Compliance Schedule, the provisions of which are incorporated by reference herein.
- f. Hettinga Transportation Inc. shall not prevent CARB inspectors from inspecting the premises of Hettinga Transportation Inc. or to audit any of their business records, including but not limited to invoices, or to conduct a physical inspection of Hettinga Transportation Inc. to determine whether Hettinga Transportation Inc. has taken any actions prohibited.

- (13) 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.
- (14) Documents. Hettinga Transportation Inc. shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, mitigation (if applicable), 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).
- (15) 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 Program Enforcement Branch/Diesel Equipment Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov (Proof of Payment)

As to Hettinga Transportation Inc.:

Hettinga Transportation Inc.
11710 Road 136
Pixley, California, 93256
stevenhettinga@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.

- (16) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Hettinga Transportation Inc. shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (17) Repeat Violations. Hettinga Transportation Inc. agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (18) 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 11 pages and 36 paragraphs.

- (19) Binding Effect. This Settlement Agreement binds Hettinga Transportation Inc., 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.
- (20) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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.
- (25) 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.
- (26) 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.
- (27) 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.

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

PENALTY BASIS

Per Unit Penalty. The per-unit or per-vehicle penalty in this case is a maximum of forty-five thousand five hundred and sixty-three dollars (\$45,563.00 USD) for each violation of Health and Safety Code section 43016 (the PSIP Regulation) (Cal. Code Regs., tit.13, § 2190 et seq). The penalty of \$12,000 over an unspecified number of days of violation is for 12 noncompliant heavy-duty vehicles. The per-unit penalty in this case is approximately \$500.00 USD per noncompliant vehicle.

The per unit or per vehicle penalty in this case is a maximum of forty-five thousand five hundred and sixty-three (\$45,563.00 USD) per action under Health and Safety Code section 43016, and/or one thousand, five hundred (\$1,500.00 USD) per unit under California Health and Safety Code section 43008.6, for violations of the Aftermarket Parts Regulation and Vehicle Code section 27156. (Cal. Code Regs., tit.13, §§ 2220-2225.) The penalty of \$70,000.00 USD over an unspecified number of days of violation is for seven noncompliant add-on or modified parts. The per unit penalty in this case is approximately \$10,000.00 USD per noncompliant vehicle.

- (32) Emissions. The PSIP Regulation and the HDVIP Regulation prohibits emissions above a specified level. The Aftermarket Parts Regulation does not 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 vehicle did not meet the regulatory requirements, all of the emissions from it were excess and illegal.

- (33) 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.
- (34) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Hettinga Transportation Inc. or confidential settlement communications.
- (35) 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 Hettinga Transportation Inc. with respect to all 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 Hettinga Transportation Inc. with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Hettinga Transportation Inc. 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, Hettinga Transportation Inc. 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 Hettinga Transportation Inc. 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 Hettinga Transportation Inc., 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. Hettinga Transportation Inc. is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Hettinga Transportation Inc.'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 Hettinga Transportation Inc.'s compliance with any aspect of this Settlement Agreement shall 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: October 18, 2023

Hettinga Transportation Inc.

Signature: /S/

Name: Steven Hettinga

Title: Owner

Date: September 14, 2023