

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and ANAHEIM UNION HIGH SCHOOL DISTRICT (hereinafter "ANAHEIM"), 501 N. Crescent Way, Anaheim, California 92801.

## **I. RECITALS**

- (1) California Health and Safety Code (HSC) §§ 39650-39675 mandates the reduction of the emissions of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive ten-year scientific assessment process, ARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use on-road diesel vehicles are powered by diesel fueled engines that emit toxic PM. On-road vehicles are controlled under the Truck and Bus regulation, as codified in 13 California code of Regulations (CCR) § 2025.
- (2) 13 CCR § 2025(e)(2) states: "Beginning January 1, 2012, fleets with school buses must comply with the requirements of 13 CCR § 2025(k) for all school buses in the fleet."
- (3) Failure to comply with the requirements of 13 CCR§ 2025 is a violation of state law resulting in penalties. HSC §§ 39674 (a) and (b) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars (\$1,000) or ten thousand dollars (\$10,000), respectively, for each day in which the violation occurs.
- (4) ANAHEIM has a fleet containing school buses.
- (5) 13 CCR§ 2025(k) requires that owners of school buses with a GVWR greater than 14,000 lbs. meet the PM Best Available Control Technology (BACT) requirements by phasing in 100 percent by January 1, 2014.
- (6) ARB has documented that ANAHEIM failed to have 100 percent of their fleet meet the PM BACT requirements by January 1, 2014.
- (7) In order to resolve these alleged violations, ANAHEIM has taken, or agreed to take, the actions enumerated below under "TERMS AND RELEASE". Further, the ARB accepts this Agreement in termination and settlement of this matter.
- (8) 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 violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, the ARB and ANAHEIM agree as follows:

## II. TERMS AND RELEASE

- (1) In consideration of the ARB not filing a legal action against ANAHEIM for the alleged violations referred to above, either proof of compliance by ANAHEIM set forth in paragraph (2) below, or ANAHEIM's payment of the penalties set forth in paragraph (3) below, ARB and ANAHEIM agree that:
- (2) *Completion of Mitigation Plan.* As a condition of this Settlement Agreement, Anaheim shall, at its own expense, complete the following mitigation plan:
  - a. Purchase five gasoline powered white fleet vehicles to replace the following five diesel powered vehicles by June 30, 2020;
    - i. Unit #259
    - ii. Unit #307
    - iii. Unit #308
    - iv. Unit #314
    - v. Unit #331
  - b. Immediately upon receiving the new vehicles, remove the diesel powered vehicles from operation and scrap them within 60 days; and
  - c. Notify ARB within 10 calendar days of completion of the mitigation plan.
- (3) *Performance in Lieu of Cash Payment of Penalty.* Within 15 days after ARB receives notification from Anaheim that it has completed its mitigation plan, ARB will consider the penalty paid in full. ARB reserves the right to verify that the mitigation plan has been completed by inspecting the school district vehicles and related records within 15 days of notification by Anaheim that the mitigation plan is completed. ARB must agree with Anaheim that the fleet is in compliance before the penalty will be considered paid in full. If Anaheim is unable to complete its obligations by June 30, 2020, Anaheim will issue payment in the amount of \$171,000 to ARB to the ARB's Air Pollution Control Fund. (APCF).
- (4) ANAHEIM shall submit proof of compliance with the Truck and Bus Regulation (as codified in title 13 CCR, section 2025) by June 30, 2020, to **Mr. Randy M. Rhondeau, Air Pollution Specialist, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.**

**Please submit the signed settlement agreement and any future mailings or documents required per the terms of this Settlement Agreement to:**

**Mr. Randy M. Rhondeau, Air Pollution Specialist  
Air Resources Board, Enforcement Division  
P.O. Box 2815  
Sacramento, CA 95812**

**Please send the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:**

**California Air Resources Board  
Accounting Office  
P.O. Box 1436  
Sacramento, California 95812-1436**

- (5) If the Attorney general files a civil action to enforce this settlement agreement, ANAHEIM shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs and costs.
- (6) It is further agreed that the penalties described in "Terms and Release", paragraph 1 are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish ANAHEIM for violations of state environmental statutes, and these penalties are payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that these penalties imposed on ANAHEIM by ARB arising from the facts described in recital paragraphs (1) - (6) are non-dischargeable under 11 United States Code § 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 benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.
- (7) ANAHEIM shall not violate HSC sections 43701 *et seq.*, 44011.6 *et seq.*, and title 13 CCR, sections 2025 *et seq.*
- (8) ANAHEIM shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to the ARB within 45 days of this agreement.
- (9) Each 1974 or newer diesel powered heavy-duty vehicle in the ANAHEIM fleet shall comply with the emission control label (ECL) requirements set forth in the title 13 CCR section 2183(c).
- (10) ANAHEIM shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in title 13 CCR section 2485, within 45 days of this Agreement.
- (11) This Agreement shall apply to and be binding upon ANAHEIM, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any

successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

- (12) This Agreement constitutes the entire agreement and understanding between ARB and ANAHEIM concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and ANAHEIM concerning the subject matter hereof.
- (13) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.
- (14) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (15) This 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.
- (16) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.
- (17) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This information, which is provided throughout this settlement agreement, is summarized here:

**The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.**

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in HSC sections 42403 and 43024.

**Truck and Bus Violations**

The per unit penalty for the Truck and Bus violations involved in this case is a maximum of \$1,000 per vehicle per day for strict liability violations or \$10,000 per vehicle per day for negligent or intentional violations.

The penalty obtained for the Truck and Bus violations involved in this case for failure to meet the requirements of the school bus compliance schedule is \$171,000.00 or \$3,000.00 per violation for 57 buses.

**The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.**

Truck and Bus Violations

The penalty provision being applied for the Truck and Bus regulation (title 13 CCR, section 2025) violations in this case is HSC section 39674 because the Truck and Bus regulation is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC section 39002 et seq., 39650-39675 and because ANAHEIM failed to bring their diesel fleet into compliance by the deadlines set forth in title 13 CCR, section 2025(k)(1).

**Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.**

Truck and Bus Violations

The provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the non-compliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (18) ANAHEIM acknowledges that ARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
- (19) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.
- (20) The penalty was based on confidential settlement communications between ARB and ANAHEIM that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and ANAHEIM and reflects ARB's assessment of the relative strength of its case against ANAHEIM, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and

remove any unfair advantage that ANAHEIM may have secured from its actions.

(21) Now therefore, in consideration of the payment on behalf of ANAHEIM to the California Air Pollution Control Fund, the ARB hereby releases ANAHEIM and their principals, officers, agents, predecessors and successors from any and all claims, the ARB may have or have in the future based on the circumstances described in paragraph (1) through (6) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

**California Air Resources Board**

By: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: Richard W. Corey

Title: Executive Officer

Date: 11/6/2019

**Anaheim Union High School District**

By: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: Jennifer Root

Title: Assistant Superintendent,  
Business

Date: 10/15/19