

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB") 1001 I Street, Sacramento, California 95814, and Anheuser Busch, LLC (hereinafter "Anheuser Busch"), 5959 Santa Fe Street, San Diego, California 92109.

I. RECITALS

- (1) California Health and Safety Code section 44011.6 (HSC § 44011.6) established the Heavy-Duty Vehicle Inspection Program (HDVIP). It authorizes CARB to inspect on-road heavy-duty vehicles for excessive smoke emissions and engine tampering and to issue citations accordingly. The program also requires the vehicle owner to repair its engines that exceed the prescribed CARB smoke opacity standards, perform a post-repair opacity test, and submit proof of repairs and any assessed penalties under the regulations of the HDVIP, chapter 3.5, California Code of Regulations, title 13, sections 2180-2188 (13 CCR §§ 2180-2188).
- (2) HSC § 43701 provides that CARB shall adopt regulations that require owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excessive smoke emissions.
- (3) 13 CCR § 2190 et seq. were adopted under the authority of HSC § 43701 and, with limited exceptions, which are not applicable here, apply to all heavy-duty diesel powered vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California.
- (4) 13 CCR § 2190 et seq. authorize the Periodic Smoke Inspection Program (PSIP) which requires the owners and operators of California based vehicle fleets of two or more heavy-duty diesel motor vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California to conduct annual smoke opacity inspections of their vehicles equipped with engines that are four years old or older.
- (5) 13 CCR § 2192(a) requires inter alia that the owner of the vehicle "[t]est the vehicle for excessive smoke emissions periodically according to the inspection intervals specified in section 2193(a), (b), and (c)", "[m]easure the smoke emissions for each test...", "[r]ecord the smoke test opacity levels and other required test information as specified in section 2194..." and "[k]eep the records specified in section 2194 for two years after the date of inspection."
- (6) During the time relevant to this action, HSC § 43016 stated, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which there is not provided in this

part any other specific civil penalty or fine, shall be subject to a civil penalty of not to exceed five hundred dollars (\$500.00) per vehicle."

- (7) CARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.
- (8) CARB contends ANHEUSER BUSCH failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for years 2013 and 2014 in violation of 13 CCR § 2190 et seq.
- (9) In 1998, following an exhaustive ten-year scientific assessment process, CARB 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 Statewide Truck and Bus regulation, as codified in 13 CCR § 2025.
- (10) California Health & Safety Code §§ 39650-39675 mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants.
- (11) In-use On-Road diesel vehicles are powered by diesel fueled engines that emit toxic PM. On-Road vehicles are controlled under the Statewide Truck and Bus regulation, as codified in 13 CCR § 2025.
- (12) 13 CCR § 2025(e)(1)(B) states: "Starting January 1, 2012, for all vehicles with GVWR greater than 26,000 lbs, excluding school buses, fleets must meet the requirements of 13 CCR § 2025(g) or fleets that report may instead comply with the phase-in option of 13 CCR § 2025(i)."
- (13) ANHEUSER BUSCH has elected to utilize the phase-in option provided for in 13 CCR § 2025(i).
- (14) The phase-in option, 13 CCR § 2025(i), requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs meet the PM best available control technology (BACT) requirements by phasing in 90 percent of its fleet to meet BACT by January 1, 2014.
- (15) CARB has documented that ANHEUSER BUSCH failed to have 90 percent of the fleet meet the PM BACT requirements by January 1, 2014.
- (16) 13 CCR § 2025(r) sets forth the requirements for reporting all vehicles with engines subject to the regulation if the owner of a fleet has elected to utilize the compliance options of 13 CCR §§ 2025(f)(4), 2025(g)(3), 2025(g)(4), 2025(h), 2025(i), the credits of 13 CCR § 2025(j), and the agricultural provisions of 13 CCR § 2025(m), single-engine and two-engine street sweeper provisions of 13 CCR § 2025(n), extension or exemptions for vehicles used exclusively in NOx exempt areas of 13 CCR § 2025(p)(1), the extension for work trucks of 13 CCR § 2025(p)(2), and the low-use vehicle provision of 13 CCR § 2025(p)(4).

- (17) 13 CCR § 2025(e)(8) states: "All information specified in 13 CCR § 2025(r) must be reported to the Executive Officer."
- (18) CARB has documented that ANHEUSER BUSCH failed to report all required information and thus violated 13 CCR §2025(e) & (r).
- (19) 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.
- (20) ANHEUSER BUSCH understands CARB's contentions and allegations above but does not admit to any alleged violations of law. In order to avoid litigation and resolve these alleged violations, ANHEUSER BUSCH has taken, or agrees to take, the actions enumerated below under "RELEASE". Further, CARB accepts this Agreement in termination and settlement of this matter.

II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against ANHEUSER BUSCH for the alleged violations referred to above, and ANHEUSER BUSCH'S payment of the penalties set forth in Section 1 below, CARB and ANHEUSER BUSCH agree as follows:

- (1) Upon agreeing to the terms set forth in the SEP Agreement, and funding the South LA Urban Greening and Community Forestry Project SEP as described in Attachment B (SEP), ANHEUSER BUSCH is released of all liabilities as they relate to the SEP as reflected in this underlying Settlement Agreement.
- (2) In the event the SEP is not fully implemented in accordance with the terms of the SEP Agreement, CARB (as the third party beneficiary) shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount waived based on the timely and successful completion of any previously agreed upon interim milestone(s) by the SEP implementer. CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, ANHEUSER BUSCH assigns any and all rights it may have against the SEP implementer to CARB.
- (3) Upon execution of this Agreement, the sum of five hundred thousand dollars (\$500,000.00) shall be paid by or on behalf of ANHEUSER BUSCH no later than January 15, 2019, as follows:
 - \$250,000.00 payable to the **Air Pollution Control Fund**
 - \$250,000.00 directed toward the **South LA Urban Greening and Community Forestry Project**

Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:

**Ann M. Stacy
Air Pollution Specialist
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, California 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**

ANHEUSER BUSCH has agreed to contribute \$250,000 to the **South LA Urban Greening and Community Forestry Project** as described in Attachment B to offset a portion of the penalty, consistent with CARB's SEP Policy. Pursuant to this Agreement, ANHEUSER BUSCH shall make the payment as described above in this paragraph.

- (6) ANHEUSER BUSCH has agreed that by partially funding the SEP, they will not receive any direct or indirect financial benefit from the SEP, and that whenever it publicizes the SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action with CARB.
- (7) ANHEUSER BUSCH agrees to pay \$250,000 toward the completion of the SEP described in Attachment B.
- (8) If the Attorney General files a civil action to enforce this settlement agreement against ANHEUSER BUSCH, ANHEUSER BUSCH shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.
- (9) 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 ANHEUSER BUSCH for the alleged violations of state environmental statutes described herein, and these penalties are payable to and for the benefit of CARB, a governmental unit. Therefore, it is agreed that these penalties imposed on ANHEUSER BUSCH by CARB arising from the recital paragraphs (1) through (18) 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.

- (10) ANHEUSER BUSCH shall not violate HSC §§ 43701 et seq., 44011.6 et seq., and 13 CCR §§ 2180 et seq., 2190 et seq., and 2485 et seq.
- (11) ANHEUSER BUSCH shall submit copies of all PSIP compliance records for the years 2018 and 2019 to CARB by January 31 of the following year. Copies shall be addressed to the attention of Ann M. Stacy, Air Pollution Specialist at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812. CARB reserves the right to visit any ANHEUSER BUSCH fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable CARB program.
- (12) ANHEUSER BUSCH shall remain in compliance with the ECL regulation as codified in 13 CCR § 2183.
- (13) ANHEUSER BUSCH shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in 13 CCR § 2485, within 45 days of this Agreement.
- (14) ANHEUSER BUSCH shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025.
- (15) ANHEUSER BUSCH shall submit proof of compliance with the Truck and Bus regulation (as codified in 13 CCR § 2025), within 45 days of the execution of this Agreement, to Ann M. Stacy, Air Pollution Specialist, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.
- (16) This Agreement shall apply to and be binding upon ANHEUSER BUSCH, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (17) This Agreement constitutes the entire agreement and understanding between CARB and ANHEUSER BUSCH concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between CARB and ANHEUSER BUSCH concerning the subject matter hereof.
- (18) 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.
- (19) 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.

- (20) 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.
- (21) 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.
- (22) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires CARB to provide information on the basis for the penalties it seeks (HSC § 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 §§ 42403 and 43024.

PSIP Violations

The per vehicle penalty for the PSIP violations involved in this case is a maximum of \$500.00 per vehicle per violation per year. The penalty obtained for the PSIP violations involved in this case is \$9,500.00 for 19 violations involving 19 vehicles, or \$500.00 per vehicle per violation.

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 Phase-In Compliance Schedule is \$480,300.00 or:

- \$356,920.00 for 54 vehicles not meeting the 90 percent phase-in requirement, (12 months in violation); and
- \$123,380.00 for 32 vehicles not meeting the 90 percent phase-in requirement, (7 months in violation).

The penalty obtained for the Truck and Bus violations involved in this case for failure to report all required information for all vehicles in the fleet is \$10,200.00 or \$300.00 per vehicle per violation for 34 vehicles.

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

PSIP Violations

The penalty provision being applied to the PSIP violations is HSC § 43016 because ANHEUSER BUSCH failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for the years 2013 and 2014 in violation of the PSIP regulation in 13 CCR § 2190 *et seq.*, for 19 vehicles. Since the PSIP regulation was adopted pursuant to authority granted in Part 5 of Division 26 of the HSC and since there is no specific penalty or fine provided for PSIP violations in Part 5, HSC § 43016 is the applicable penalty provision.

Truck and Bus Violations

The penalty provision being applied for the Truck and Bus regulation (13 CCR § 2025) violations in this case is HSC § 39674 because the Truck and Bus regulation is an Airborne Toxic Control Measure adopted pursuant to authority contained in HSC §§ 39002 *et seq.*, 39650-39675 and because ANHEUSER BUSCH failed to bring their diesel fleet into compliance by the deadlines set forth in 13 CCR § 2025(i).

The penalty provision being applied for the Truck and Bus regulation (13 CCR § 2025) violations in this case is HSC § 39674 because the Truck and Bus regulation is an Airborne Toxic Control Measure adopted pursuant to authority contained in HSC §§ 39002 *et seq.*, 39650-39675 and because ANHEUSER BUSCH failed to report all required information for all vehicles in the fleet for which they have elected to utilize compliance options/credits/provisions as required in 13 CCR § 2025(r).

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.

PSIP Violations

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

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 noncompliant vehicles involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (24) ANHEUSER BUSCH acknowledges that CARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, CARB has considered all

relevant facts, including those listed at HSC § 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.

- (25) 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.
- (26) The penalty was based on confidential settlement communications between CARB and ANHEUSER BUSCH that CARB does not retain in the ordinary course of business. The penalty is the product of an arm's length negotiation between CARB and ANHEUSER BUSCH and reflects CARB's assessment of the relative strength of its case against ANHEUSER BUSCH, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that ANHEUSER BUSCH may have secured from its actions.
- (27) Now therefore, in consideration of the payment on behalf of ANHEUSER BUSCH to the Air Pollution Control Fund, CARB hereby releases ANHEUSER BUSCH and their principals, officers, agents, predecessors and successors from any and all claims, CARB may have or have in the future based on the circumstances described in paragraphs (1) through (18) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

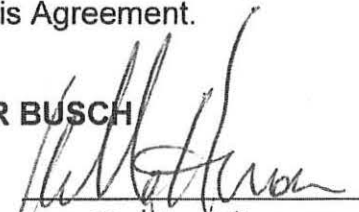
Signature: 

Print Name: Richard W. Corey

Title: Executive Officer

Date: 12/20/2018

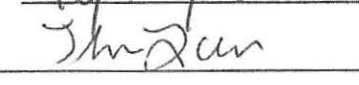
ANHEUSER BUSCH

Signature: 

Print Name: J. Schottman

Title: DIRECTOR

Date: 12/19/18

Signature: 

Print Name: Thomas D. Larson

Title: Secretary

Date: 12/20/2018