

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 COACHELLA VALLEY UNIFIED SCHOOL DISTRICT (hereinafter "CVUSD"), 55557 Campus Road, Thermal, California 92274.

I. RECITALS

- (1) California Health and Safety Code section 39650-39675 (HSC §§ 39650-39675) mandate 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, 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 Truck and Bus regulation, as codified in 13 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) CVUSD 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) CARB has documented that CVUSD failed to have 100 percent by January 1, 2014.
- (7) In order to resolve these alleged violations, CVUSD has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, CARB 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, CARB and CVUSD agree as follows:

II. TERMS AND RELEASE

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

- (1) The penalty amount for these alleged violations enforceable against CVUSD is the sum of six thousand dollars (\$6,000.00).
- (2) Completion of Mitigation Plan. As a condition of this Settlement Agreement, CVUSD shall, at its own expense, complete the following mitigation plan before March 31, 2019:
 1. Purchase 50 trees
 2. Plant trees at five separate school locations
 3. Provide all labor to plant trees
 4. Provide irrigation systems for the trees that complies with all state and local building requirements, including the installation of backflow prevention devices if required.

CARB will not be overseeing the installation or placement of the trees or irrigation system and CARB does not accept any responsibility for any damage caused by this construction. The school district will indemnify CARB and hold CARB harmless for any damage caused by the location, use, and placement of the trees and the irrigation system. Indemnification will include, but not be limited to, contamination to the water system caused by the improper installation of the irrigation system, mudslides or soil erosion, or tree failure due to the improper placement and care of the trees. CARB strongly encourages CVUSD to work with qualified installers to ensure that the irrigation systems and trees are not placed in violation of federal, state, and local laws and ordinances. CVUSD will be responsible for all costs associated with this project including, but not limited to, permitting fees and equipment rental.

- (3) Performance in Lieu of Cash Payment of Penalty. CVUSD will notify CARB within 15 days after completion of the Mitigation Plan. CVUSD will supply receipts and work order documentation upon request. Upon completion of the Mitigation Plan CARB will consider the penalty paid in full. CARB reserves the right to verify that the Mitigation Plan was completed by inspecting the five school locations within one year after completion. CARB must agree with CVUSD that the Mitigation Plan is complete before the penalty will be considered paid in full. If CVUSD is unable to complete its obligations by March 31, 2019, CVUSD will issue a payment in the amount of six thousand dollars (\$6,000.00) to CARB's Air Pollution Control Fund.

SETTLEMENT AGREEMENT AND RELEASE

CARB and CVUSD

Page 3 of 6

- (4) CVUSD shall submit proof of compliance with the Truck and Bus regulation by March 31, 2019 for all regulated heavy-duty diesel vehicles to **Mr. Eric Bissinger, Air Pollution Specialist, P.O. Box 2815, Sacramento, California 95812.**
- (5) **The signed settlement agreement and any future mailings or documents per the terms of this Settlement Agreement shall be mailed to:**

Mr. Eric Bissinger
Air Pollution Specialist
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, California 95812

The due date for this Settlement Agreement is December 28, 2018.

- (6) If the Attorney General files a civil action to enforce this settlement agreement, CVUSD shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.
- (7) CVUSD shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (8) CVUSD shall remain in compliance with the Emission Control Label regulation as codified in 13 CCR § 2183.
- (9) CVUSD shall remain in compliance with the Periodic Smoke Inspection Program as codified in 13 CCR §§ 2180-2194.
- (10) CVUSD 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.
- (11) CVUSD shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025.
- (12) This Agreement shall apply to and be binding upon CVUSD, 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.
- (13) This Agreement constitutes the entire agreement and understanding between CARB and CVUSD concerning the subject matter hereof, and supersedes and

replaces all prior negotiations and agreements between CARB and CVUSD concerning the subject matter hereof.

- (14) 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.
- (15) 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.
- (16) 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.
- (17) 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.
- (18) 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.

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 \$6,000.00 or \$1,000.00 per vehicle per violation for 6 buses.

The penalty was discounted based on the fact that this was a first time violation and the violator made diligent efforts to comply and to cooperate with the investigation.

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 (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 CVUSD failed to bring their diesel fleet into compliance by the deadlines set forth in 13 CCR § 2025(k).

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

- (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 CARB and CVUSD that CARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between CARB and CVUSD and reflects CARB's assessment of the relative strength of its case against CVUSD, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that CVUSD may have secured from its actions.
- (21) Now therefore, in consideration of the payment on behalf of CVUSD to the Air Pollution Control Fund and the Placer County Community Based Supplemental Environmental Project, CARB hereby releases CVUSD 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 (6) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Signature: 

Print Name: Dr. Todd P. Sax

Title: Chief, Enforcement Division

Date: 12/17/18

Coachella Valley Unified School District

Signature: 

Print Name: ERIK LEE

Title: ASST. Supt. - Bus. Svcs.

Date: DEC. 6, 2018