

SETTLEMENT AGREEMENT AND RELEASE

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 DIVINE ENTERPRISES/DEDICATED FLEET SERVICES, INC. (hereinafter "DIVINE/DEDICATED"), 300 Harding Boulevard, Roseville California 95678.

I. RECITALS

- (1) California Health and Safety Code sections 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, 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 (TB) regulation, as codified in the California Code of Regulations, title 13, section 2025 (13 CCR § 2025).
- (2) 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)."
- (3) DIVINE/DEDICATED has elected to utilize the phase-in option provided for in 13 CCR § 2025(i).
- (4) 13 CCR § 2025(i), phase-in option, 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 30 percent of their fleet by January 1, 2012, 60 percent by January 1, 2013, 90 percent by January 1, 2014, 90 percent by January 1, 2015, and 100 percent by January 1, 2016.
- (5) ARB has documented that DIVINE/DEDICATED failed to have 30 percent of their fleet meet the PM BACT requirements by January 1, 2012, 60 percent by January 1, 2013, and 90 percent by January 1, 2014.
- (6) 13 CCR § 2025(w), Disclosure of Regulation Applicability, requires that any person residing in California selling a vehicle with an engine subject to this regulation provide the specified disclosure in writing to the buyer on the bill of sale, sales contract addendum, or invoice.
- (7) ARB has documented that DIVINE/DEDICATED failed to include the Disclosure of Regulation Applicability on the bill of sales, contract addendums, or invoices, in violation of 13 CCR § 2025(w).

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- (8) 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.
- (9) Transport Refrigeration Units (TRUs) are powered by diesel fueled engines that emit this toxic PM. TRUs are regulated under the Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units and TRU Generator Sets, and Facilities Where TRUs Operate (TRU ATCM) as codified in 13 CCR § 2477.1 through 2477.21.
- (10) 13 CCR § 2477.5(a) provides that no owner/operator shall operate a TRU or TRU generator (gen) set in California unless it meets in-use performance standards established in § 2477.5.
- (11) 13 CCR § 2477.5(e) requires that owner/operators of all California-based TRUs and TRU gen sets subject to this regulation shall apply for an ARB Identification Number (IDN) for all California-based TRUs or TRU gen sets operated by the operator by submitting an application to ARB.
- (12) 13 CCR § 2477.5(e)(1)(F) requires that within 30 days of receipt of the ARB-issued IDN, owners/operators of California-based TRUs and TRU gen sets permanently affix or paint the IDN to both sides of the TRU chassis housing.
- (13) 13 CCR § 2477.6(a) requires all operators to submit an Operator Report to ARB which includes TRU and TRU gen set inventory information for each TRU and TRU gen set based in California that is owned or leased by the operator.
- (14) ARB Enforcement Division has documented that DIVINE/DEDICATED failed to bring the TRUs it operates in California into compliance with the in-use performance standards before the deadlines set forth in the regulation, failed to submit a TRU Operator Report, failed to register their TRUs in ARB's Equipment Registration system (ARBER), and failed to affix ARB IDNs to both sides of the TRUs in their fleet within 30 days of receipt of ARB IDNs.
- (15) Failure to bring the TRU fleet in compliance with applicable in-use performance standards, failure to apply for and affix ARB IDNs and failure to submit an operator report are violations of state law resulting in penalties. HSC § 39674 authorizes civil penalties of up to ten thousand dollars (\$10,000) for each day that the violation occurs.
- (16) DIVINE/DEDICATED has five outstanding citations, as noted in the table below:

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Citation Number	Violation Type	Issue Date
STB080614002BOP	TB	08/06/2014
TRU082714003GTP	TRU	08/27/2014
TRU101915001CCY	TRU	10/19/2015
STB091615006GTP	TB	09/16/2015
TRU080816003BOP	TRU	08/08/2016

- (17) In order to resolve these alleged violations, DIVINE/DEDICATED has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, ARB accepts this Agreement in termination and settlement of this matter.
- (18) 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, ARB and DIVINE/DEDICATED agree as follows:

II. TERMS AND RELEASE

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

- (1) Upon execution of this Agreement, DIVINE/DEDICATED shall pay a civil penalty of \$64,650.00. Payment shall be made in 6 payments as described below, beginning on **September 1, 2017**:

Payment Due Date:	In the Amount of and Payable to:
September 1, 2017	\$10,775.00 the Air Pollution Control Fund
December 1, 2017	\$10,775.00 the Air Pollution Control Fund
March 1, 2018	\$10,775.00 the Air Pollution Control Fund
June 1, 2018	\$10,775.00 the Air Pollution Control Fund
September 3, 2018	\$10,775.00 the Air Pollution Control Fund
December 3, 2018	\$10,775.00 the Air Pollution Control Fund

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

**Mr. Brad Penick
Air Pollution Specialist
California Air Resources Board
Enforcement Division**

**P.O. Box 2815
Sacramento, California 95812**

Please submit each payment by the applicable payment due date along with the corresponding "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

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

- (2) **Effect of Untimely Payment.** If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable. In addition, if the Attorney General files a civil action to enforce this settlement agreement, DIVINE/DEDICATED shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (3) It is agreed that if DIVINE/DEDICATED, including its subsidiary or parent company, at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving DIVINE/DEDICATED, its subsidiary, or parent company, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against DIVINE/DEDICATED, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of DIVINE/DEDICATED's, its subsidiary, or parent company's properties, or if any deposit account or other property of DIVINE/DEDICATED, its subsidiary, or parent company be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or DIVINE/DEDICATED, its subsidiary, or parent company takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.
- (4) 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 DIVINE/DEDICATED 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 DIVINE/DEDICATED by ARB arising from the facts described in recital paragraphs (1) through (16) 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.

- (5) DIVINE/DEDICATED shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (6) DIVINE/DEDICATED shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (CCDET I) class, (SAE J1667 Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles) as described on the ARB webpage at <http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm>. This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP, the ECL regulation and the HDVIP.
 - (a) DIVINE/DEDICATED shall have the fleet maintenance manager (or equivalent) and all staff performing opacity tests for compliance with PSIP and the HDVIP attend the CCDET I class. Proof of CCDET I completion shall be provided to ARB within six months of the date of this Agreement and be maintained in each applicable employee's file for the term of his or her employment.
 - (b) If DIVINE/DEDICATED uses a contractor to perform the annual smoke opacity testing required under the PSIP, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET I course, DIVINE/DEDICATED shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET I course within the past four years. This proof of CCDET I completion shall be provided to ARB with PSIP records as required by this Agreement and be maintained with the annual PSIP records.
- (7) DIVINE/DEDICATED shall comply with the following options to attend the CCDET II class (Diesel Exhaust After Treatment and Maintenance), described on the ARB's webpage <http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm>. This class is conducted by various California Community Colleges and instructs attendees on California's emission regulations and the proper care and maintenance of diesel exhaust after-treatment systems (DEATS).
 - (a) DIVINE/DEDICATED shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of DEATS attend the CCDET II class. Proof of CCDET II completion shall be provided to ARB within six months of the date of this Agreement and also be maintained in each applicable employee's file for the term of his or her employment.
 - (b) In case DIVINE/DEDICATED uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, DIVINE/DEDICATED shall obtain proof that the

contractor's staff maintaining the DEATS device(s) completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by DIVINE/DEDICATED to ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.

- (c) In case DIVINE/DEDICATED is unable to find a CCDET II certified contractor within a radius of 25 miles from its yard for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, DIVINE/DEDICATED shall contract only with the authorized verified diesel emission control strategy installer(s) or original equipment manufacturer distributor(s) for the maintenance of DEATS. The proof of the CCDET II completion for the fleet maintenance manager (or equivalent) shall be provided by DIVINE/DEDICATED to ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.
- (8) DIVINE/DEDICATED shall submit copies of all PSIP compliance records for the years 2017 and 2018 to ARB by January 31 of the following year. **Copies shall be addressed to the attention of Mr. Brad Penick, Air Pollution Specialist, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.** ARB reserves the right to visit any DIVINE/DEDICATED fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.
- (9) DIVINE/DEDICATED shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to ARB within 45 days of this agreement.
- (10) DIVINE/DEDICATED shall remain in compliance with the ECL regulation as codified in 13 CCR § 2183.
- (11) DIVINE/DEDICATED 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.
- (12) DIVINE/DEDICATED has 5 outstanding citations (citation numbers STB080614002BOP, TRU082714003GTP, TRU101915001CCY, STB091615006GTP, TRU080816003BOP, dated 08/06/2014, 08/27/2014, 10/19/2015, 09/16/2015, and 08/08/2016), for not meeting the requirements of the Truck and Bus and TRU programs. These citations will be cleared through this Agreement.
- (13) DIVINE/DEDICATED shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025.

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- (14) DIVINE/DEDICATED 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 **Mr. Brad Penick, Air Pollution Specialist, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.**
- (15) Within 45 days of the execution of this Agreement, DIVINE/DEDICATED shall bring its fleet of TRUs operating in California in compliance with the applicable in-use performance standards as required by 13 CCR § 2477.5(a) and apply for an ARB IDN for each of the California-based TRUs or TRU gen sets that it owns and/or operates as required by 13 CCR § 2477.5(e) and affix the IDN to both sides of each TRU or TRU gen set within 30 days of receiving the IDN from ARB as required by 13 CCR § 2477.5(e)(1)(F). DIVINE/DEDICATED shall submit the proof of reporting in ARBER to **Mr. Brad Penick, Air Pollution Specialist, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California.**
- (16) DIVINE/DEDICATED shall submit a TRU Operator Report as required by 13 CCR § 2477.6(a) within 45 days of execution of this Agreement to **Mr. Brad Penick, Air Pollution Specialist, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.**
- (17) DIVINE/DEDICATED shall not violate TRU ATCM as codified in 13 CCR § 2477.
- (18) This Agreement shall apply to and be binding upon DIVINE/DEDICATED, 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:
- (19) This Agreement constitutes the entire agreement and understanding between ARB and DIVINE/DEDICATED concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and DIVINE/DEDICATED concerning the subject matter hereof.
- (20) 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.
- (21) 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.

- (22) 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.
- (23) 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.
- (24) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires ARB 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 Phase-In Compliance Schedule is \$39,000.00 or \$250 per vehicle per month of violation:

- \$15,000.00 for 5 vehicles not meeting the 30 percent phase-in requirement by January 1, 2012 (12 months in violation),
- \$18,000.00 for 6 vehicles not meeting the 60 percent phase-in requirement by January 1, 2013 (12 months in violation), and
- \$6,000.00 for 2 vehicles not meeting the 90 percent phase-in requirement by January 1, 2014 (12 months in violation)

The penalty obtained for the Truck and Bus violations involved in this case for failure to disclose appropriate language on the bills of sales, sales contract addendums, or invoices is \$9,450.00 or \$225.00 per vehicle per violation for 42 vehicles.

The penalties above were 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 penalty obtained for the two outstanding citations for T&B violations (STB080614002BOP and STB091615006GTP) is \$3,600.00.

TRU Violations

The per unit penalty for the TRU violations involved in this case is a maximum of \$1,000 per unit per day for strict liability violations or \$10,000 per vehicle per day for negligent or intentional violations pursuant to HSC § 39674. The penalty obtained for the TRU violations involved in this case is \$10,000.00 for 16 noncompliant TRUs operated by DIVINE/DEDICATED or \$625.00 for each violation. 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 penalty obtained for the three outstanding citations for TRU violations (TRU082714003GTP, TRU101915001CCY and TRU080816003BOP) is \$2,600.00.

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 DIVINE/DEDICATED failed to bring their diesel fleet into compliance by the deadlines set forth in 13 CCR § 2025(i) and failed to include the Disclosure of Regulation Applicability on the bill of sales, contract addendums, or invoices.

TRU Violations

The penalty provision being applied for the TRU ATCM (13 CCR § 2477) violations (including registration and labeling) is HSC § 39674 because the TRU rule is an Air Toxic Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and DIVINE/DEDICATED, as an owner of TRUs, failed to bring all TRUs in its fleet into compliance by the deadlines set forth in the TRU ATCM and failed to register the TRUs in its fleet in ARBER.

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 for failure to comply with the in-use performance standards 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.

The provisions cited above for failure to include the Disclosure of Regulation Applicability on the bill of sales, contract addendums, or invoices do not prohibit emissions above a specified level.

TRU Violations

The provisions cited above for failure to comply with the in-use performance standards do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the noncompliant TRUs involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.


The provisions cited above for failure to comply with the registration and labeling requirements do not prohibit emissions above a specified level of g/hp-hr.

- (25) DIVINE/DEDICATED 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 § 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.
- (26) 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.
- (27) The penalty was based on confidential settlement communications between ARB and DIVINE/DEDICATED that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and DIVINE/DEDICATED and reflects ARB's assessment of the relative strength of its case against DIVINE/DEDICATED, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and

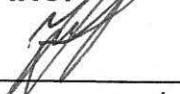
remove any unfair advantage that DIVINE/DEDICATED may have secured from its actions.

(28) Now therefore, in consideration of the payment on behalf of DIVINE/DEDICATED to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases DIVINE/DEDICATED and their principals, officers, agents, predecessors and successors from any and all claims, ARB may have or have in the future based on the circumstances described in paragraphs (1) through (16) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Signature: 
Print Name: Ellen M. Peter
Title: Chief Counsel
Date: 10/23/2017

**DIVINE ENTERPRISES / DEDICATED
FLEET SERVICES, INC.**

Signature: 
Print Name: Vladimir Kofeynikov
Title: General Manager
Date: 9-26-17