

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 Kouklis Equipment Company, Incorporated (hereinafter "KEC"), 15374 Country Line Road, Delano, California 93216.

I. RECITALS

- (1) Health and Safety Code (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 regulation, as codified in 13 California Code of Regulations (CCR) § 2025.
- (2) 13CCR § 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) 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) KEC has elected to meet the requirements of the Engine Model Year Compliance Schedule provided for in 13 CCR § 2025(g).
- (5) 13 CCR § 2025(g) requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs. (heavier vehicles) meet PM Best Available Control Technology (BACT) requirements for all 2000 through 2004 model year engines by January 1, 2013, and upgrade to a 2010 model year emissions equivalent engine for all 1993 and older model year engines by January 1, 2015, and all 1994 and 1995 model year engines by January 1, 2016.
- (6) ARB has documented that KEC failed to meet PM BACT requirements for all 2000 through 2004 model year engines by January 1, 2013 and failed to upgrade to a 2010 model year emissions equivalent engine for all 1993 and older model year engines by January 1, 2015, and all 1994 and 1995 model year engines by January 1, 2016.
- (7) 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 10-year scientific assessment process, ARB identified particulate

matter (PM) from diesel-fueled engines as a toxic air contaminant. Transport Refrigeration Units (TRU) 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.

- (8) 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.
- (9) 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.
- (10) 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.
- (11) 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.
- (12) ARB Enforcement Division has documented that KEC 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.
- (13) 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.
- (14) In order to resolve these alleged violations, KEC has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, ARB accepts this Agreement in termination and settlement of this matter.
- (15) 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 KEC agree as follows:

II. TERMS AND RELEASE

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

- (1) Upon execution of this Agreement, the sum of TWENTY NINE THOUSAND, TWO HUNDRED AND FIFTY dollars (\$29,250.00) shall be paid on behalf of KEC no later than August 31, 2017, as follows:
 - \$29,250.00 payable to 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. Femi Olaluwoye
Air Pollution Specialist
California Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, California 91731**

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**

- (2) If the Attorney General files a civil action to enforce this settlement agreement, KEC shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.
- (3) 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 KEC 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 KEC by ARB arising from the facts described in recital paragraphs (1) through (15) 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.

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- (4) KEC shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (5) KEC shall comply with the Truck and Bus regulation as codified in 13 CCR § 2025. Within 30 days of the execution of this Agreement, KEC shall submit the proof of compliance to Mr. Femi Olaluwoye, Air Pollution Specialist, ARB Enforcement Division, 9480 Telstar Avenue, Suite 4, El Monte, California 91731.
- (6) KEC shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025.
- (7) Within 45 days of the execution of this Agreement, KEC 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). KEC shall submit the proof of reporting in ARBER to Mr. Femi Olaluwoye, Air Pollution Specialist, California Air Resources Board, Enforcement Division, 9480 Telstar Avenue Suite 4, El Monte, California 91731.
- (8) KEC shall submit a TRU Operator Report as required by 13 CCR § 2477.6(a) within 45 days of execution of this Agreement to Mr. Femi Olaluwoye, Air Pollution Specialist, California Air Resources Board, Enforcement Division, 9480 Telstar Avenue Suite 4, El Monte, California 91731.
- (9) KEC shall not violate TRU ATCM as codified in 13 CCR § 2477.
- (10) This Agreement shall apply to and be binding upon KEC, 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.
- (11) This Agreement constitutes the entire agreement and understanding between ARB and KEC concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and KEC concerning the subject matter hereof.
- (12) 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.

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- (13) 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.
- (14) 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.
- (15) 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.
- (16) 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 Engine Model Year Compliance Schedule for heavier vehicles is \$21,000.00 or \$250.00 per month of violation:

- \$12,000.00 for 1 vehicle with a 2000-2004 model year engine (48 months in violation),
- \$6,000.00 for 1 vehicle with a 1993 and older model year engine (24 months in violation), and
- \$3,000.00 for 1 vehicle with a 1994-1995 model year engine (12 months in violation).

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

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obtained for the TRU violations involved in this case is \$8,250.00 for 11 noncompliant TRUs operated by KEC or \$750.00 for each violation.

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

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 KEC, as an owner of TRUs, failed to bring all TRUs in its fleet into compliance by the deadlines set forth in the TRU ATCM.

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

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

- (17) KEC acknowledges that ARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts,

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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.

- (18) 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.
- (19) The penalty was based on confidential settlement communications between ARB and KEC that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and KEC and reflects ARB's assessment of the relative strength of its case against KEC, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that KEC may have secured from its actions.
- (20) Now therefore, in consideration of the payment on behalf of KEC to the Air Pollution Control Fund, ARB hereby releases KEC 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 (15) 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: 8/31/17

Kouklis Equipment Company, Incorporated

Signature: 

Print Name: ANDREW A. KOUKLIS JR

Title: CEO

Date: 8/25/17