

## 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 TULARE JOINT UNION HIGH SCHOOL DISTRICT (hereinafter "TJUHS"), 426 North Blackstone Street, Tulare, California 93274.

### 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 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) 13 CCR § 2025(k) requires that owners of school buses with a gross vehicle weight rating greater than 14,000 lbs. meet the PM Best Available Control Technology (BACT) requirements by phasing in 33 percent of their school bus fleet by January 1, 2012, 66 percent by January 1, 2013, and 100 percent by January 1, 2014 and years thereafter.
- (5) 13 CCR § 2025(k)(4) *Extension of Deadline for Unavailability of Verified Diesel Emission Control Strategy (VDECS)* states: "If a school bus engine cannot be equipped with the highest level VDECS for PM the school bus owner must record and submit to the Executive Officer the information listed in section 2025(k)(4)(B) through (E) by January 31 of the applicable compliance year through January 31, 2017."
- (6) Between January 2012 to April 2015, which represents the period at issue in this Settlement Agreement and Release, TJUHS had a fleet containing school buses that included school buses with a gross vehicle weight rating greater than 14,000 lbs.

- (7) TJUHSD fleet of school buses failed to have 33 percent of their fleet meet the PM BACT requirements by January 1, 2012 and failed to have 66 percent of their fleet meet PM BACT requirements by January 1, 2013. TJUHSD did not comply with 13 CCR § 2025(k) for those years.
- (8) Pursuant to 13 CCR 2025(k)(4) TJUHSD requested multiple compliance extensions for specific school buses in the fleet covering compliance years 2014 through 2017. ARB Executive Officer (EO) granted these extensions which made the specific school buses in the TJUHSD fleet compliant.
- (9) In 2015, three buses in the TJUHSD fleet did not meet PM BACT requirements because they were not included in the compliance extensions provided by the ARB EO. In July 2015, these three buses were retrofitted with diesel particulate filters. Therefore, TJUHSD was not 100 percent by January 1, 2015 as required by 13 CCR §2025(k).
- (10) TJUHSD is currently compliant with 13 CCR § 2025(k) via an approved extension through January 1, 2018.
- (11) In order to resolve these alleged violations, TJUHSD agrees to take mitigation efforts (hereinafter "mitigation plan") enumerated below under Section II "TERMS AND RELEASE", subparagraph (2) *Completion of Mitigation Plan* of this Settlement Agreement and Release (hereinafter "Settlement Agreement"). Further, ARB will accept completion of the mitigation plan by TJUHSD in lieu of payment of the agreed upon penalty.
- (12) 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 Settlement Agreement. Specifically, ARB and TJUHSD agree as follows:

## II. TERMS AND RELEASE

- (1) The penalty amount for these alleged violations enforceable against TJUHSD is \$13,500.
- (2) *Completion of Mitigation Plan.* As a condition of this Settlement Agreement, TJUHSD shall, at its own expense, complete the following mitigation plan:

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- a. Purchase three electric refuse haulers and two hybrid vehicles by September 1, 2017 to replace the following five gasoline vehicles;
    - i. Unit # 58
    - ii. Unit # 47
    - iii. Unit # 49
    - iv. Unit # 39
    - v. Unit # 40
  - b. Immediately upon receiving the new vehicles, remove the gasoline 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 TJUHSD 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 the TJUHSD that the mitigation plan is completed. ARB must agree with TJUHSD that the mitigation plan is complete before the penalty will be considered paid in full. If TJUHSD is unable to complete its obligations by September 1, 2017, TJUHSD will issue payment in the amount of \$13,500 to ARB's Air Pollution Control Fund (APCF).
- (4) TJUHSD shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025.
- (5) TJUHSD, by December 31, 2017, shall submit proof of compliance with the January 1, 2018 Truck and Bus deadline, for all regulated heavy-duty diesel vehicles, to **Ms. Andrea Juarez, Air Pollution Specialist, California Air Resources Board, Enforcement Division, 9480 Telstar Avenue, Suite 4, El Monte, California 91731.**
- (6) Send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:

**Ms. Andrea Juarez  
Air Pollution Specialist  
California Air Resources Board  
Enforcement Division  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731**

**The due date for this Settlement Agreement is July 7, 2017.**

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- (7) If the Attorney General files a civil action to enforce this Settlement Agreement, TJUHSD shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.
- (8) This Settlement Agreement shall apply to and be binding upon TJUHSD, 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.
- (9) This Settlement Agreement constitutes the entire agreement and understanding between ARB and TJUHSD concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and TJUHSD concerning the subject matter hereof.
- (10) No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Settlement Agreement.
- (11) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be invalid or unenforceable, the remainder of this Settlement Agreement remains in full force and effect.
- (12) This Settlement 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.
- (13) This Settlement 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.
- (14) 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 school bus compliance schedule is \$13,500.00 or \$250.00 per month of violation for 11 buses, for a total of 54 months in 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 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 TJUHSD 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.

- (15) TJUHSD 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.

- (16) 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.
- (17) The penalty is the product of an arms length negotiation between ARB and TJUHSD and reflects ARB's assessment of the relative strength of its case against TJUHSD, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that TJUHSD may have secured from its actions.
- (18) The undersigned represent that they have the authority to enter into this Settlement Agreement.
- (19) This Settlement Agreement and any modifications thereto, may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument. Faxed or emailed signatures shall constitute original signatures binding.

**California Air Resources Board**

Signature: \_\_\_\_\_



Print Name: Dr. Todd P. Sax

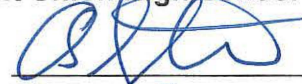
Title: Chief, Enforcement Division

Date: \_\_\_\_\_

7/11/17

**Tulare Joint Union High School District**

Signature: \_\_\_\_\_



Print Name: CHRIS STEVENS

Title: \_\_\_\_\_

DIRECTOR OF FACILITIES

Date: \_\_\_\_\_

6/26/17