

## 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 Double D Transportation Co. (hereinafter "Double D"), 22991 Clawiter Road, Hayward, CA 94545.

### I. RECITALS

- (1) California Health and Safety Code (HSC) section 44011.6 established the Heavy Duty Vehicle Inspection Program (HDVIP). It authorizes ARB 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 ARB smoke opacity standards, perform a post-repair opacity test, and submit proof of repairs and any assessed penalties under the Regulations of the Heavy-Duty Smoke Inspection Program, chapter 3.5, sections 2180-2188, title 13 California Code of Regulations (CCR).
- (2) HSC section 43701 provides that ARB 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) Title 13 CCR, section 2190 *et seq.* was adopted under the authority of HSC section 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) Title 13 CCR, section 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 that are four years older than the model year of the vehicle's engine.
- (5) Title 13 CCR, section 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) HSC section 43016 states, "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) The ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.
- (8) ARB contends Double D failed to ensure a passing test from one vehicle in its fleet of heavy duty diesel vehicles for 2012 and 2013 in violation of the PSIP regulation in title 13, CCR sections 2190 *et seq.*
- (9) Health and Safety Code, section 39650-39675 mandates the reduction of the emissions of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the Air Resources Board 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 particulate matter. On-Road vehicles are controlled under section 2025 within title 13 CCR.
- (10) Title 13 CCR, section 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 section 2025(g) or fleets that report may instead comply with the phase-in option of section 2025(i).”
- (11) Double D elected to meet Alt. PM BACT Schedule 2025(g)(3) for 2012, and elected to meet the requirements of the Engine Model Year Compliance Schedule provided for in 13 CCR § 2025(g) for 2013.
- (12) 13 CCR § 2025(g) requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs. meet PM BACT requirements for all 1996 through 1999 engine model years by January 1, 2012; and 2000 through 2004 engine model years by January 1, 2013.
- (13) ARB has documented that Double D failed to meet PM BACT requirements for all 1996 through 2004 engine model years by January 1, 2013.
- (14) 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 TACs not to exceed one thousand dollars (\$1,000) or ten thousand dollars (\$10,000), respectively, for each day in which the violation occurs.

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

## II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against Double D for the violations referred to above, the ARB and Double D agree as follows:

- (1) Upon execution of this Agreement, Double D shall pay a civil penalty of **fourteen thousand seven hundred and fifty dollars (\$14,750)**. Payment shall be made in check form as described below and the payments will be made no later than **June 26, 2014**.

SETTLEMENT AGREEMENT AND RELEASE ARB AND DOUBLE D:

- **\$11,063** made out to **Air Resources Board**
- **\$3,687** made out to **Peralta Colleges Foundation**

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

**Ms. Allison Spreadborough, Air Pollution Specialist  
Air Resources Board, Enforcement Division  
P.O. Box 2815  
Sacramento, CA 95812**

**Please submit 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, Double D shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.
- (3) Double D 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, ECL and the HDVIP.
  - (a) Double D 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 Double D 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, Double D 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.
- (4) Double D shall comply with one or both of 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) Double D 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 Double D uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, Double D 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 Double D to the ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.

- (5) Double D shall submit copies of all PSIP compliance records for the years 2014 and 2015 to the ARB by January 31 of the following year. Copies shall be addressed to the attention of Ms. Allison Spreadborough at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812. The ARB reserves the right to visit any Double D fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.
- (6) Double D shall not violate the Truck and Bus regulation as codified in CCR, title 13, section 2025.
- (7) Double D shall comply with the Truck and Bus regulation as codified in CCR, title 13, section 2025. Within 30 days of the execution of this Agreement, Double D shall submit the proof of compliance to Ms. Allison Spreadborough, Air Pollution Specialist, Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812
- (8) Double D shall complete Low NOx Software Upgrades (reflash) on all applicable heavy duty diesel engines operating in California and report back to the ARB within 45 days of this Agreement.
- (9) Each 1974 or newer diesel powered heavy-duty vehicle in Double D's fleet shall comply with the ECL regulation as codified in 13 CCR § 2183.
- (10) Double D shall instruct all employees who operate diesel fueled commercial vehicles in California to comply with the idling regulations set forth in CCR, title 13, section 2485 within 45 days of the execution of this agreement.
- (11) This Agreement shall apply to and be binding upon Double D 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.
- (12) This Agreement constitutes the entire agreement and understanding between ARB and Double D concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Double D concerning the subject matter hereof.
- (13) 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.
- (14) 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.

- (15) 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.
- (16) 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.
- (17) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see HSC section 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 sections 42403 and 43024.

PSIP Violations

The per vehicle penalty for the PSIP violations involved in this case is a maximum of \$500 per vehicle per violation per year. The penalty obtained for the two PSIP violations involved in this case is \$750 for one vehicle, or \$375 per 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.

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 is \$500 per month of violation for (1) vehicle with a 1996 through 1999 (12 months in violation); and (1) vehicle with a 2000 through 2004 model year engine (12 months in violation); and (1) vehicle with a 2005 through 2006 model year engine (4 months in violation).

- \$6,000 for 1 vehicle with a 1996 through 1999 model year engine, or \$500 per vehicle (12 months in violation); and,
- \$6,000 for 1 vehicle with a 2000 through 2004 model year engine, or \$500 per vehicle (12 months in violation).

- \$2,000 for 1 vehicle with a 2005 through 2006 model year engine, or \$500 per vehicle (4 months in violation).

**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 section 43016 because Double D failed to ensure a passing test from one vehicle in its fleet of heavy duty diesel vehicles for 2012 and 2013 in violation of the PSIP regulation in title 13, CCR sections 2190 *et seq.* 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 section 43016 is the applicable penalty provision.

#### Truck and Bus Violations

The penalty provision being applied for the Truck and Bus regulation (CCR, title 13, section 2025) violations in this case is HSC section 39674 because the Truck and Bus regulation is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC section 39002 *et seq.*, 39650-39675 and because Double D failed to bring their diesel fleet into compliance by the deadlines set forth in CCR, title 13, section 2025(g)(1)

**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 non-compliant units involved and their individual emission rate 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 non-compliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (18) Double D acknowledges that ARB has complied with SB 1402 in prosecuting and settling the case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 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.
- (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/vehicle basis.
- (20) The penalty was based on confidential settlement communications between ARB and Double D that ARB does not retain in the ordinary course of business either. The penalty is the product of an arm's length negotiation between ARB and Double D and reflects ARB's assessment of the relative strength of its case against Double D, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Double D may have secured from its actions.
- (21) Now, therefore, in consideration of the payment by Double D, in the amount of fourteen thousand seven hundred and fifty dollars (\$14,750), ARB hereby releases Double D and its principals, officers, directors, agents, subsidiaries, predecessors, and successors from any and all claims that ARB may have based on the facts and allegations described in Recital paragraphs (1) through (16) above. The undersigned represent that they have the authority to enter into this Agreement.

**California Air Resources Board**

**Double D Transportation Co.**

By: <u></u>	By: <u></u>
Name: <u>James Ryden</u>	Name: <u>D. Vandegriff</u>
Title: <u>Chief, Enforcement Division</u>	Title: <u>Equip Manager</u>
Date: <u>6/2/14</u>	Date: <u>5/28/14</u>