

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by the California Air Resources Board (ARB) principally located at 1001 I Street, Sacramento, California 95814, and Elms Equipment Rental, Inc., principally located at P.O. Box 371, Brawley, California 92227, and Imperial Premix LLC., principally located at 422 East Barioni, Imperial, California 92251.

RECITALS

1. California Health and Safety Code (H&SC) section 39658(b)(1) establishes the Asbestos National Emissions Standard for Hazardous Air Pollutants as an Airborne Toxic Control Measure (Asbestos ATCM) enforceable by ARB, Code of Federal Regulations (CFR), title 40, section 61.140, et seq..
2. The Asbestos ATCM requires owners and operators of demolition or renovation activities to provide written notification of the intention to demolish or renovate a regulated facility 10 working days before work begins (40 CFR § 61.145(b)).
3. On June 18, 2015, ARB inspected the demolition site located at 330 West Aten Road, Imperial, California 92251. The demolition contractor, Elms Equipment Rental, Inc., was hired to demolish four large steel storage tanks. Imperial Premix LLC., is the owner of the storage tanks. The storage tanks are regulated structures under the Asbestos ATCM. At the time of demolition, no written notification of intention to demolish had been submitted by the owner or operator.
4. The Asbestos ATCM defines an owner or operator of a demolition or renovation activity as "any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both" (40 CFR §61.141).
5. Elms Equipment Rental, Inc., and Imperial Premix LLC., were each an owner or operator of a demolition or renovation activity under the Asbestos ATCM, with respect to the demolition of the steel storage tanks.
6. Elms Equipment Rental, Inc., submitted a notification form to ARB on March 31, 2015. The notification identifies the demolition start date to be November 26, 2014.
7. On May 19, 2015, ARB issued a Notice of Violation (NOV) number ASB-2015-39, to Elms Equipment Rental, Inc., and Imperial Premix LLC., for failing to properly notify

ARB and/or U.S. EPA at least 10 working days before beginning the demolition of the steel storage tanks, as required by the Asbestos ATCM.

8. Elms Equipment Rental, Inc., and Imperial Premix LLC., admit the facts identified in Recitals 1 through 7 above.
9. A violation of the Asbestos ATCM is a violation of State Law resulting in penalties. H&SC section 39674 authorizes strict liability penalties not to exceed \$10,000.00 per day, for each day that the violation occurs.
10. ARB and Elms Equipment Rental, Inc., and Imperial Premix LLC., desire to resolve this matter completely under the terms of this Agreement, in lieu of litigation. In order to resolve these violations, Elms Equipment Rental, Inc., and Imperial Premix LLC., agree to take the actions enumerated below within the Terms and Release.

TERMS AND RELEASE

11. In consideration of ARB not filing a legal action against Elms Equipment Rental, Inc., and Imperial Premix LLC., for the alleged violations referred to above, ARB and Elms Equipment Rental, Inc., and Imperial Premix LLC., agree as follows:

Upon execution of this Agreement Elms Equipment Rental, Inc., and Imperial Premix LLC., agree to pay civil penalties in the total amount of (FIVE THOUSAND) dollars (\$5,000.00). Payment shall be made in accordance with the instructions in Attachment A to this agreement. Elms Equipment Rental, Inc., and Imperial Premix LLC., shall sign and return original copies of the Agreement concurrently with the initial Penalty payment, not later than July 15, 2015

12. Elms Equipment Rental, Inc., and Imperial Premix LLC., shall not violate the Asbestos ATCM.
13. This Agreement shall apply to and be binding upon Elms Equipment Rental, Inc., and Imperial Premix LLC., along with their 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.
14. This Agreement constitutes the entire agreement and understanding between ARB and Elms Equipment Rental, Inc., and Imperial Premix LLC., concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Elms Equipment Rental, Inc., and Imperial Premix LLC., concerning the subject matter.

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 is to remain 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. **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, Statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (H&SC section 39619.7). This information is provided throughout this Agreement and is summarized here:

The manner in which the penalty amount was determined, including 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 H&SC section 42403 (H&SC § 42403).

The per unit penalty in this case is a maximum of \$10,000.00 per violation per day for strict liability violations pursuant to H&SC § 39674. After considering all factors specified in H&SC § 42403, the penalty obtained in this case is a total of \$5,000.00 or \$500 per day for each of the 10 working day that Elms Equipment Rental, Inc., and Imperial Premix LLC., failed to submit a notification. Asbestos is a toxic air contaminant and violations of the Asbestos ATCM, including violations of this nature could result in immediate and localized exposure. The notification requirement allows ARB to inspect the project for RACM not identified or disclosed in the pre-project asbestos inspection and not properly abated prior to demolition. The penalty reflects that ARB has not previously issued Asbestos ATCM notices of violations to Elms Equipment Rental, Inc., or Imperial Premix LLC.

The provision of law the penalty is being assessed under and why that provision is the most important.

The penalty provision that is being applied in this case is H&SC § 39674 because Elms Equipment Rental, Inc., and Imperial Premix LLC., failed to comply with the Asbestos ATCM.


Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specific level, and if so a quantification of excess emissions, if it is practical to do so.

The notification requirements do not reflect an emission limit.


18. Elms Equipment Rental, Inc., and Imperial Premix LLC., acknowledge that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at H&SC § 42403, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specific 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 cost 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 reflects ARB's assessment of the relative strength of its case against Elms Equipment Rental, Inc., and Imperial Premix LLC., the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage that Elms Equipment Rental, Inc., and Imperial Premix LLC., may have secured from their actions.
21. Now therefore, in consideration of the payment on behalf of Elms Equipment Rental, Inc., and Imperial Premix LLC., ARB hereby resolves with Elms Equipment Rental, Inc., and Imperial Premix LLC., and their principals, officers, agents, predecessors, and successors from any and all claims for the past violations of the Asbestos ATCM ARB may have based on the circumstances described in the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

SIGNATURES

California Air Resources Board

By: 
Name: Dr. Todd Sax, Chief
Title: Enforcement Division
Date: 8/6/15

Elms Equipment Rental, Inc.

By: 
Name: Alan D. Huber
Title: President
Date: 8/8/15

Imperial Premix LLC.

By: _____
Name: Raymond M. Pedersen
Title: President & Owner
Date: _____

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