

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the State of California Air Resources Board (ARB) with its principal office at 1001 "I" Street, Sacramento, California 95814, and L and D Landfill Limited Partnership (L and D) located at 8635 Fruitridge Road, Sacramento, California 95826. ARB and L and D are referred to collectively herein as the "Parties."

### RECITALS

1. The Global Warming Solutions Act of 2006 authorizes ARB to adopt regulations to reduce greenhouse gas emissions. (Health & Safety Code § 38530)
2. Pursuant to that authority, ARB adopted the Methane Emissions from Municipal Solid Waste Landfills, California Code of Regulations (CCR), title 17, section 95460 et seq. (LMR Regulation) to reduce methane emissions from municipal solid waste (MSW) landfills. The LMR Regulation became effective on June 17, 2010. (17 CCR § 95460)
3. The LMR Regulation applies to all MSW landfills that received solid waste after January 1, 1977. (17 CCR § 95461)
4. The LMR Regulations defines a Municipal Solid Waste Landfill to mean an entire disposal facility in a contiguous geographical space where solid waste is placed in or on land. (17 CCR § 95471(a)(21))
5. The LMR Regulation establishes emission control, emission monitoring, and recordkeeping and reporting requirements applicable to landfills with greater than or equal to 450,000 tons of waste in place and landfill gas heat input capacity greater than or equal to 3.0 million British thermal units per hour (MMBtu/hr). These requirements include, but are not limited to:
  - a. Landfill gas heat input capacity reporting (17 CCR § 95463(b));
  - b. Periodic surface methane emission monitoring (17 CCR § 95469); and
  - c. Recordkeeping and reporting. (17 CCR § 95470).
6. Landfills that receive only construction and demolition (C&D) waste, inert waste, or non-decomposable wastes are exempt from the requirements of the LMR Regulation. (17 CCR § 95462(b)) Inert waste can contain insignificant amounts of decomposable waste and demolition materials can contain minor amounts (less than 10 percent by volume) of wood and metals.

7. ARB determined that green waste is considered a decomposable solid waste for the purposes of determining exemptions to the LMR Regulation requirements. (17 CCR § 95475(a)(22))
8. Failure to comply with the requirements of the LMR Regulation is a violation of state law resulting in penalties. Health and Safety Code sections 38580 and 42400, et seq., authorize strict liability penalties not to exceed ten thousand (\$10,000) per day, for each day that the violation occurs.
9. The LMR Regulation provides that each day or portion thereof that any report, plan, or document required by the regulation remains un-submitted, is submitted late, or contains incomplete or inaccurate information, shall constitute a single, separate violation of the regulation. (17 CCR § 95472(c))
10. L and D owns and operates a MSW landfill as defined by the LMR Regulation with greater than 450,000 tons of waste in place and with a landfill gas heat input capacity greater than 3.0 MMBtu/hr
11. L and D receives C&D waste for onsite disposal. L and D also receives green waste for use as an alternative daily cover and for off-site disposal. L and D also receives minor amounts of green waste for disposal onsite.
12. L and D operates a landfill gas collection and control system to collect landfill gasses generated from the decomposition of wastes buried within the landfill.
13. ARB alleges that L and D is subject to the LMR Regulation requirements.
14. ARB alleges that L and D violated the LMR Regulation by:
  - d. Failing to submit or submitting late a landfill gas heat input capacity report;
  - e. Failing to submit or submitting late one or more annual reports; and
  - f. Failing to conduct required surface emissions monitoring.
15. L and D accepts the facts in recitals 1 through 14, but denies any liability or fault with respect to the allegations. L and D contends that L and D is exempt from the LMR Regulation. Any admission by L and D in this Agreement shall only be valid for use by ARB in enforcing this agreement and in any future ARB enforcement action(s) against L and D.
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 alleged violation and voluntarily agree to resolve this matter by means of this Agreement. L and D disputes the allegations but agrees to comply with the Terms and Conditions stated below, in lieu of litigation. Nothing in this Agreement shall be deemed an admission to any alleged material fact, and this Agreement is subject to the limitations contained in Evidence Code section 1152. ARB accepts this Agreement in termination and settlement of this matter.

### TERMS AND CONDITIONS

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

1. L and D agrees to a total stipulated penalty in the amount of SEVENTY THOUSAND (\$70,000.00) dollars.

Payment shall be made to the "Air Pollution Control Fund" on behalf of L and D and payment is due no later than **December 10, 2016**. Payment and submittal of a copy of the signed Agreement shall be handled in accordance with the instructions in Attachment A to this Agreement.

L and D shall mail the original executed Agreement in an envelope marked confidential, postmarked no later than **December 10, 2016** to:

Maria Loera  
Enforcement Division  
California Air Resources Board PO Box 2815  
Sacramento, CA 95812

2. Upon the effective date of the agreement as defined in paragraph 6 below, L and D shall comply with all provisions of the LMR Regulation applicable to a MSW landfills with greater than or equal to 450,000 tons of waste in place and landfill gas heat input capacity greater than or equal to 3.0 MMBtu/hr.
3. This Agreement constitutes the entire agreement and understanding between ARB and L and D concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and L and D, both verbal or in writing, concerning the subject matter hereof.
4. This Agreement shall apply to and be binding upon L and 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.

5. Failure to pay the stipulated penalty per paragraph 1 of this Agreement shall void the Agreement and ARB may take enforcement action based on the initial violation and any subsequent violations of this Agreement. In the event ARB takes such action and L and D is found liable under the LMR Regulation, any civil penalty awarded to ARB will be reduced by the amount paid under this Agreement.
6. The Effective Date of this Agreement shall be the date upon which L and D executes this Agreement.
7. 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 both parties to this Agreement. This Agreement shall further serve to toll any applicable statute of limitations until L and D pays the stipulated penalty.
8. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid, or unenforceable in any jurisdiction, the remainder of this Agreement remains in full force and effect.
9. 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.
10. This Agreement is deemed to have been drafted equally by ARB and L and D, and it will not be interpreted for or against either Party on the ground that said Party drafted it.
11. It is further agreed that the stipulated penalty described in this Agreement is non-dischargeable under United States Code, title 11, section 523(a)(7).
12. **SB 1402 Statement**

Health and Safety Code section 39619.7 (Senate Bill 1402, Dutton, ch. 413, Stat. of 2010) (SB 1402) requires ARB to provide information on the basis for the penalties it seeks. This information is provided throughout this Agreement and is summarized here.

**The manner in which the penalty was determined.**

Penalties must be set at levels sufficient to deter violations. The stipulated penalty in this matter was determined based on all relevant circumstances, including the unique circumstances of this case, giving consideration to the eight factors specified in Health and Safety Code section 42403. Those circumstances were considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, penalties sought in other cases, and the potential costs and risk associated with litigation. L and D cooperated fully with the investigation.

The stipulated penalty reflects approximately \$753 per day for 93 days of alleged violation of the LMR Regulation.

**The legal provisions under which the penalty was assessed and why that provision is most appropriate for that violation.**

The penalty provisions being applied in this case are Health and Safety Code sections 38580 and 42402 and CCR, title 17, section 95472 because ARB alleges that L and D failed to comply with CCR, title 17, sections 95465, 95469, and 95470, the provisions that govern violations of monitoring, reporting, and surface emission standards for landfills.

**Whether the governing provisions prohibit emissions at a specified level, and if so, a quantification of excess emissions if it is practicable to do so.**

The LMR Regulation prohibits emissions of methane above specified levels (17 CCR § 95465). L and D failed to monitor or report methane emissions as required by the LMR Regulation; ARB is therefore unable to quantify the extent to which L and D may have exceeded the emission limitations. However, Health and Safety Code section 38580(b)(2) specifies that any violation of any regulation adopted pursuant to the Global Warming Solutions Act of 2006 shall be deemed to result in an emission for purposes of the governing penalty statutes.

13. L and D acknowledges that ARB complied with Health and Safety Code section 39619.7 and SB 1402 in investigating, prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health and Safety Code section 42403, 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.

14. The stipulated penalty was 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 case negotiations, and the potential cost and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger.
15. The stipulated penalty reflects ARB's assessment of the relative strength of its case against L and D, confidential settlement communications, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage that L and D may have secured from its actions.
16. Now therefore, in consideration of the settlement payment on behalf of L and D to the California Air Resources Board Fund, ARB hereby resolves with L and D and its principals, officers, agents, predecessors and successors any and all claims for the violations.
17. Each of the undersigned represents and warrants that he or she has full power and authority to enter into this Agreement.

**ACKNOWLEDGED AND ACCEPTED BY:**

California Air Resources Board

L and D Limited Partnership

By: Ellen M. Peter <sup>12/30/16</sup>

By: Michael P. Lien <sup>28 Nov. 16</sup>

Name: Ellen M. Peter

Name: Michael P. Lien

Title: ARB Chief Counsel

Title: General Manager