

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 OLD DURHAM WOOD INC. (hereinafter "OLD DURHAM WOOD"), located at 2616 Durnel Avenue, Durham, California, 95503.

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, California Code of Regulations (CCR), title 13, chapter 3.5, sections 2180-2188.
- (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 excess smoke emissions.
- (3) CCR, title 13, 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) CCR, title 13, section 2190 *et seq.* authorizes 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) CCR, title 13, 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 violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) per vehicle....”
- (7) ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.
- (8) ARB contends OLD DURHAM WOOD failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for years 2009 and 2010 in violation of CCR, title 13, section 2190 *et seq.*
- (9) HSC sections 39650-39675 mandate 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 ARB identified particulate matter (PM) from diesel-fueled engines as a TAC. In-use on-road diesel vehicles are powered by diesel fuel engines that emit toxic PM. On-road vehicles are controlled under CCR, title 13, section 2025.
- (10) CCR, title 13, section 2025(e)(8) states: “All information specified in section 2025(r) must be reported to the Executive Officer.”
- (11) CCR, title 13, section 2025(r) sets forth the requirements for reporting all vehicles with engines subject to the regulation if the owner of a fleet has elected to utilize the compliance options of section 2025(f)(4), 2025(g)(3), 2025(g)(4), 2025(h), 2025(i), the credits of section 2025(j), and the agricultural provisions of section 2025(m), single-engine and two-engine street sweeper provisions of section 2025(n), extension or exemptions for vehicles used exclusively in NOx exempt areas of section 2025(p)(1), and the extension for low-mileage construction trucks of section 2025(p)(2).

- (12) HSC 44275 et seq. establishes the Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program). The Carl Moyer Program provides incentive grants for cleaner-than-required engines, equipment and other sources of pollution providing early or extra emission reductions.
- (13) HSC 44288 states that Carl Moyer Program funds "shall be awarded in conjunction with the execution of a contract that obligates the state board or a participating district to make the grant and obligates the grantee to take the actions described in the grant application." Such contract shall contain recapturing provisions to ensure and enhance the effectiveness of the Carl Moyer Program.
- (14) HSC 44287 requires ARB establish grant criteria and guidelines for the Carl Moyer Program. The Carl Moyer Program Guidelines states that non-compliance with the Carl Moyer Agreement or Guidelines may result in the cancellation of the Agreement, recapturing of voucher funds, or any other remedy available under law.
- (15) OLD DURHAM WOOD signed three Moyer applications affirming they were in compliance with all federal, state, and local air quality regulations and would stay. Based on those applications, OLD DURHAM WOOD is the recipient of three California ARB Carl Moyer vouchers in the amount of \$45,000 each, issued through the ARB Voucher Incentive Program (VIP) in 2010.
- (16) ARB contends that OLD DURHAM WOOD violated the terms of the Carl Moyer Agreement by failing to be in compliance with ARB regulations.
- (17) OLD DURHAM WOOD is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation, and therefore agree as follows:

II. TERMS AND RELEASE

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

- (1) Upon execution of this Agreement, OLD DURHAM WOOD shall pay a civil penalty of ten thousand dollars (\$10,000.00) and return of Moyer funds of

thirteen thousand five dollars (13,500.00). Payment shall be made in check form as described below and the payments made by the dates indicated:

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Payment Due Date:		In the Amount of and Paid to:	
1	5/17/2013	\$2,125.00	paid to Peralta Community College District
2	5/17/2013	\$7,875.00	paid to California Air Pollution Control Fund
3	7/15/2013	\$13,500.00	Paid to Sacramento Air Quality Management District

All payments and documents shall be sent to the attention of:

Robbie Morris
Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, California 95812

- (2) OLD DURHAM WOOD shall not violate HSC sections 43701 *et seq.* and 44011.6 *et seq.*, and CCR, title 13, sections 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (3) OLD DURHAM WOOD 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/hdvp/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. OLD DURHAM WOOD 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 OLD DURHAM WOOD 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, OLD DURHAM WOOD 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) OLD DURHAM WOOD 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/hdvp/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. OLD DURHAM WOOD 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 OLD DURHAM WOOD uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, OLD DURHAM WOOD 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 OLD DURHAM WOOD to the ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.
- (5) OLD DURHAM WOOD shall submit copies of all PSIP compliance records for years 2013 and 2014 to the ARB by January 31 of the following year. Copies shall be addressed to the attention of Robbie Morris, Air Pollution Specialist, Air Resources Board, Enforcement Division, P.O. Box 2815,

Specialist, Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812. The ARB reserves the right to visit any OLD DURHAM WOOD fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

- (6) OLD DURHAM WOOD 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.
- (7) Each 1974 or newer diesel powered heavy-duty vehicle in the OLD DURHAM WOOD fleet shall remain in compliance with the emission control label (ECL) requirements set forth in the CCR, title 13, section 2183(c) within 45 days of this agreement.
- (8) OLD DURHAM WOOD 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.
- (9) OLD DURHAM WOOD shall not violate the Truck and Bus regulation as codified in CCR, title 13, section 2025.
- (10) OLD DURHAM WOOD shall complete and submit the Equipment Identification Number (EIN) Statement of Facts Form located at http://www.arb.ca.gov/enf/hdvp/ein_statement_of_facts.pdf within 45 days of this agreement to the attention of Robbie Morris at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812 or rmorris@arb.ca.gov.
- (11) OLD DURHAM WOOD shall comply with the requirements for off-road equipment set forth in title 13, CCR section 2449.
- (12) This Agreement shall apply to and be binding upon OLD DURHAM WOOD 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.
- (13) This Agreement constitutes the entire agreement and understanding between ARB and OLD DURHAM WOOD concerning the subject matter

between ARB and OLD DURHAM WOOD concerning the subject matter hereof.

- (14) 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.
- (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 remains 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) 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.
- (18) **Senate Bill 1402**

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. The penalty obtained for the PSIP violations involved in this case is \$10,000.00 for 14 vehicles, or \$375.00 per vehicle per violation. The penalty was discounted based

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ARB and OLD DURHAM WOOD

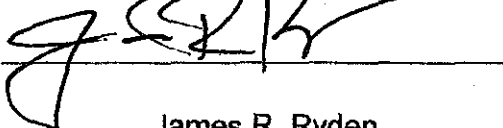
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noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations.

- (21) Penalties in future cases might be smaller or larger on a per unit/vehicle basis.
- (22) The penalty was based on confidential settlement communications between ARB and OLD DURHAM WOOD 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 OLD DURHAM WOOD and reflects ARB's assessment of the relative strength of its case against OLD DURHAM WOOD, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that OLD DURHAM WOOD may have secured from its actions.
- (23) Now, therefore, in consideration of the penalty payment by OLD DURHAM WOOD, in the amount of ten thousand dollars (\$10,000.00) and the return of Moyer funds in the amount of thirteen thousand five hundred dollars (\$13,500.00), ARB hereby releases OLD DURHAM WOOD 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~~

OLD DURHAM WOOD Inc.

By: 

By: 

Name: James R. Ryden

Name: Sean Casey

Title: Chief, Enforcement Division

Title: Office Manager

Date: 5/28/17

Date: 5/23/13