

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 RARA TRUCKING (hereinafter "RARA"), P.O Box 7353 San Jose, CA 95150.

I. RECITALS

- (1) 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)(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 13 CCR § 2025(g) or fleets that report may instead comply with the phase-in option of 13 CCR § 2025(i)."
- (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 (\$1,000.00) or ten thousand dollars (\$10,000.00), respectively, for each day in which the violation occurs.
- (4) RARA has elected to meet the requirements of the Engine Model Year Compliance Schedule provided for in 13 CCR § 2025(g).
- (5) 13 CCR § 2025(g) requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs. (heavier vehicles) meet PM Best Available Control Technology (BACT) requirements for all 1996 through 1999 engine model years by January 1, 2012, and upgrade to a 2010 model year emissions equivalent engine for all 1994-1995 model year engines by January 1, 2016.
- (6) ARB has documented that RARA failed to meet PM BACT requirements for all 1996 through 1999 engine model year vehicles by January 1, 2012, and failed to upgrade all heavier vehicles with a 1994-1995 model year engine to a 2010 model year emissions equivalent engine by January 1, 2016.
- (7) 13 CCR § 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 the low-use vehicle provision of 13 CCR § 2025(p)(4).

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- (8) 13 CCR § 2025(e)(8) states: "All information specified in 13 CCR § 2025(r) must be reported to the Executive Officer."
- (9) RARA has elected to utilize the compliance provisions of 13 CCR § 2025(p)(4).
- (10) ARB has documented that RARA failed to report all vehicles with engines subject to the regulation for which the fleet owner has elected to utilize the compliance options of 13 CCR § 2025(p)(4).
- (11) Title 13 CCR § 2025(x)(2) of the Truck and Bus Regulation provides that "Any in-state or out-of-state motor carrier, California broker, or any California resident who operates or directs the operation of any vehicle subject to this regulation shall verify that each hired or dispatched vehicle is in compliance with the regulation and comply with the record keeping requirements of section 2025(s)(4)."
- (12) Title 13 CCR § 2025(s)(4) of the Truck and Bus Regulation establishes the following recordkeeping requirements: "Bills of lading and other documentation identifying the motor carrier or broker who hired or dispatched the vehicle and the vehicle dispatched. The documentation shall include the name and contact information of the hiring business entity and vehicle information including license plate number, and other information." Title 13 CCR § 2025(x)(3) also provides compliance may be accomplished by keeping at the business location, a copy of the Certificate of Reported Compliance with the In-Use On-Road Diesel Vehicle Regulation for each fleet."
- (13) ARB has documented that RARA, as a broker failed to verify that each fleet hired or dispatched was in compliance with the Truck and Bus Regulation and failed to comply with the record keeping requirements of section 2025(s)(4) in 2015 over an undetermined number of days, subjecting RARA to civil penalties pursuant to HSC § 39674.
- (14) In order to resolve these alleged violations, RARA has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, ARB accepts this Agreement in termination and settlement of this matter.
- (15) 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, ARB and RARA agree as follows:

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II. TERMS AND RELEASE

In consideration of ARB not filing a legal action against RARA for the alleged violations referred to above, and RARA's payment of the penalties set forth in Section 1 below, ARB and RARA agree as follows:

- (1) Upon execution of this Agreement, RARA shall pay a civil penalty of \$10,200.00. Payment shall be made in 12 payments as described below, beginning on **August 15, 2016**.

Payment Due Date:	In the Amount of and Payable to:	
August 15, 2016	\$850.00	to the Peralta Colleges Foundation
September 15, 2016	\$850.00	to the Peralta Colleges Foundation
October 17, 2016	\$850.00	to the Peralta Colleges Foundation
November 15, 2016	\$850.00	to the Air Pollution Control Fund
December 15, 2016	\$850.00	to the Air Pollution Control Fund
January 16, 2017	\$850.00	to the Air Pollution Control Fund
February 15, 2017	\$850.00	to the Air Pollution Control Fund
March 15, 2017	\$850.00	to the Air Pollution Control Fund
April 17, 2017	\$850.00	to the Air Pollution Control Fund
May 15, 2017	\$850.00	to the Air Pollution Control Fund
June 15, 2017	\$850.00	to the Air Pollution Control Fund
July 17, 2017	\$850.00	to the Air Pollution Control Fund

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

**Mr. Ryman Simangan
Air Pollution Specialist
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, California 95812**

Please submit each payment by the applicable payment due date along with the corresponding "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

**California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812-1436**

- (2) Effect of Untimely Payment. If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable. In addition, if the Attorney General files a civil action to enforce this settlement agreement, RARA shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (3) It is agreed that if RARA, including its subsidiary or parent company, at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving RARA, its subsidiary, or parent company, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against RARA, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of RARA's, its subsidiary, or parent company's properties, or if any deposit account or other property of RARA, its subsidiary, or parent company be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or RARA, its subsidiary, or parent company takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.
- (4) It is further agreed that the penalties described in "Terms and Release", paragraph 1 are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish RARA for violations of state environmental statutes, and these penalties are payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that these penalties imposed on RARA by ARB arising from the facts described in recital paragraphs (1) through (14) are non-dischargeable under 11 United States Code § 523 (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty or forfeiture payable to and for benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.
- (5) RARA shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (6) RARA shall comply with 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).

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- (a) RARA 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 RARA uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, RARA 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 RARA to ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.
 - (c) In case RARA is unable to find a CCDET II certified contractor within a radius of 25 miles from its yard for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, RARA shall contract only with the authorized verified diesel emission control strategy installer(s) or original equipment manufacturer distributor(s) for the maintenance of DEATS. The proof of the CCDET II completion for the fleet maintenance manager (or equivalent) shall be provided by RARA to ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.
- (7) As is typically required, RARA shall submit copies of all PSIP compliance records for the two years (2016 and 2017) after the close of the audit to ARB by January 31 of the following year. ARB acknowledges that RARA has already submitted copies of all PSIP compliance records for year 2015 and has therefore complied with that requirement. RARA must still submit copies of all PSIP compliance records for year 2016 to ARB by January 31 of the following year. **Copies shall be addressed to the attention of Mr. Ryman Simangan at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.** ARB reserves the right to visit any RARA fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.
 - (8) RARA shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to ARB within 45 days of this agreement.
 - (9) RARA shall remain in compliance with the ECL regulation as codified in 13 CCR § 2183.

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- (10) RARA shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in 13 CCR § 2485, within 45 days of this Agreement.
- (11) RARA shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025.
- (12) RARA shall submit proof of compliance with the Truck and Bus regulation (as codified in 13 CCR § 2025), within 45 days of the execution of this Agreement, to **Mr. Ryman Simangan, Air Pollution Specialist, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.**
- (13) This Agreement shall apply to and be binding upon RARA, 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.
- (14) This Agreement constitutes the entire agreement and understanding between ARB and RARA concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and RARA concerning the subject matter hereof.
- (15) 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.
- (16) 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.
- (17) 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.
- (18) 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.
- (19) 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 \$1,000.00 per vehicle per day for strict liability violations or \$10,000.00 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 for heavier vehicles is \$8,250.00 or \$750.00 per month of violation:

- \$5,250.00 for (1) vehicle with a 1996-1999 model year engine (7 months in violation); and
- \$3,000.00 for (1) vehicle with a 1994-1995 model year engine (4 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 penalty obtained for the Truck and Bus violations involved in this case for misreporting required information for all vehicles in the fleet is \$450.00 or \$225.00 per vehicle per violation for 2 vehicles.

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 total penalty obtained for the Truck and Bus violations involved in this case for failure to verify that each fleet hired or dispatched was in compliance with the Truck and Bus Regulation and to maintain required records is \$1,500.00 for 2 hired fleets or \$750.00 per fleet hired or dispatched.

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 RARA failed to bring their diesel fleet into compliance by the deadlines set forth in 13 CCR § 2025(g). RARA also misreported required information for 2 vehicles in the fleet for which they have elected to utilize compliance low use provisions as required in 13 CCR § 2025(p)(4). In addition, RARA failed to verify compliance for each vehicle hired or dispatched and to maintain records as required by 13 CCR §§ 2025(x)(2).

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 vehicles involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (20) RARA 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.
- (21) 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.
- (22) The penalty was based on confidential settlement communications between ARB and RARA that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and RARA and reflects ARB's assessment of the relative strength of its case against RARA, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift

compliance with the law and remove any unfair advantage that RARA may have secured from its actions.

- (23) Now therefore, in consideration of the payment on behalf of RARA to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases RARA and their principals, officers, agents, predecessors and successors from any and all claims, ARB may have or have in the future based on the circumstances described in paragraphs (1) through (14) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Signature: 

Print Name: Dr. Todd P. Sax

Title: Chief, Enforcement Division

Date: 7/21/16

RARA TRUCKING INC.

Signature: Raul A. Rivas

Print Name: Raul Rivas

Title: President

Date: July 15, 2016