

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 SEASIDE REFRIGERATED TRANSPORT, INCOPORATED (hereinafter "SEASIDE"), located at 2400 Grant Avenue, San Lorenzo, California 94580.

I. RECITALS

- (1) 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. Transport Refrigeration Units (TRUs) are powered by diesel fueled engines that emit toxic particulate matter. TRUs are controlled under section 2477.
- (2) CCR, Title13, section 2477 (e) (1) (A) (1) states: No owner/operator shall operate a TRU or TRU generator (gen) set in California unless it meets the in-use emission category performance standard.
- (3) The ARB Enforcement Division has documented that SEASIDE, failed to bring their fleet of TRUs in compliance with the in-use performance standard.
- (4) Health and Safety Code, Sections 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 not to exceed ten thousand dollars (\$10,000.00) respectively, for each day in which the violation occurs.
- (5) ARB contends that if the facts described in recital paragraphs (1) – (4) were proven civil penalties could be imposed against SEASIDE, as provided in H&SC sections 39674.
- (6) SEASIDE 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 & RELEASE

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

- (1) Upon execution of this Agreement, SEASIDE shall pay a civil penalty of nine thousand seven hundred fifty dollars (\$9,750.00). Payment shall be made in

check form as described below, and payments shall be made in 6 monthly payments beginning on **December 13, 2013**.

**SETTLEMENT AGREEMENT AND RELEASE ARB AND SEASIDE
REFRIGERATED TRANSPORT, INC.**

Payment Due Date:		In the Amount of and Paid to:
1)	12/13/2013	\$1218.75 paid to Peralta Colleges Foundation \$406.25 paid to Air Pollution Control Fund
2)	1/13/2014	\$1,218.75 paid to Peralta Colleges Foundation \$406.25 paid to Air Pollution Control Fund
3)	2/13/2014	\$1,625.00 paid to Air Pollution Control Fund
4)	3/13/2014	\$1,625.00 paid to Air Pollution Control Fund
5)	4/13/2014	\$1,625.00 paid to Air Pollution Control Fund
6)	5/13/2014	\$1,625.00 paid to Air Pollution Control Fund

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

Mr. Brad Penick, Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

- (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, SEASIDE 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 SEASIDE, 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 SEASIDE, 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 SEASIDE, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of SEASIDE'S, its subsidiary, or parent company's properties, or if any deposit account or other property of SEASIDE, 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 SEASIDE, its subsidiary, or parent company takes any action to authorize

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any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.

- (4) If the Attorney General files a civil action to enforce this settlement agreement, SEASIDE shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (5) SEASIDE shall not violate Health and Safety Code Sections 43701 et seq. and 44011.6 et seq., Title 13, CCR, Sections 2180 et seq., 2190 et seq., and 2485 et seq.
- (6) SEASIDE 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) SEASIDE 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 SEASIDE 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, SEASIDE 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.
- (7) SEASIDE shall comply with one or both of the following options to attend the CCDET II class (Diesel Exhaust After Treatment and Maintenance), described on 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 exhaust after treatment systems (EATS).
 - (a) SEASIDE shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of EATS attend the CCDET II class. Proof of CCDET II completion shall be provided to

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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 SEASIDE uses a contractor for the maintenance of EATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, SEASIDE shall obtain proof that the contractor's staff maintaining the EATS device(s) completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by SEASIDE to the ARB within six months of the date of this settlement and be maintained with the EATS installation and maintenance records.
- (8) SEASIDE shall provide copies of all PSIP compliance records for calendar years 2013 and 2014 to ARB by January 31 of the following year. Copies shall be addressed to the attention of Mr. Brad Penick, Air Pollution Specialist, ARB Enforcement Division, P.O. Box 2815, Sacramento, CA 95812. The ARB reserves the right to visit any PACIFIC SEAFOOD fleet location at any time during business hours to conduct compliance audits for the TRU, HDVIP, PSIP, or any other applicable ARB program.
- (9) SEASIDE 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.
- (10) Each 1974 or newer diesel powered heavy-duty commercial vehicle in the SEASIDE fleet shall comply with the emission control label (ECL) requirement set forth in the CCR, Title 13, Section 2183 (c) and report back to ARB, within 45 days of the execution of this agreement.
- (11) SEASIDE shall instruct all employees who operate diesel fueled commercial vehicles to comply with the commercial vehicle idling regulations set forth in CCR, Title 13, Section 2485, within 45 days of the execution of this agreement.
- (12) Within 30 days of the execution of this Agreement, SEASIDE shall submit a plan to bring its fleet of TRUs operating in California in compliance with the applicable in-use emission standards as required by Title13, CCR, section 2477 (e) (1) (A) (1). SEASIDE shall submit the compliance plan to Mr. Brad Penick, Air Pollution Specialist, ARB Enforcement Division, P.O. Box 2815, Sacramento, CA 95812.
- (13) Within 90 days of the execution of this Agreement, SEASIDE shall bring its fleet of TRUs operating in California in compliance with the applicable in-use emission standards as required by Title13, CCR, section 2477 (e) (1) (A) (1), apply for an ARB IDN for each of the California-based TRUs or

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TRU gen sets that it owns and/or operates as required by Title 13, CCR, section 2477 (e) (1) (E) (1), and affix the IDN to both sides of each TRU or TRU gen set within 30 days of receiving the number from ARB as required by Title 13, CCR section 2477 (e) (E) (1) (f). SEASIDE shall submit the proof of registration in the Air Resources Board Equipment Registration (ARBER) system to Mr. Brad Penick, Air Pollution Specialist, ARB Enforcement Division, P.O. Box 2815, Sacramento, CA 95812.

- (14) SEASIDE shall submit a correct TRU Operator Report in the ARBER database as required by Title 13, CCR section 2477 (f) (1) (A) within 45 days of execution of this Agreement.
- (15) SEASIDE shall review and correct all the information reported in the ARBER database within 45 days of execution of this Agreement.
- (16) SEASIDE shall not violate the TRU ATCM, as codified in CCR, Title 13 section 2477.
- (17) SEASIDE shall not violate the Truck and Bus regulation as codified in title 13 CCR, section 2025.
- (18) This Agreement constitutes the entire agreement and understanding between ARB and SEASIDE concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and SEASIDE concerning the subject matter hereof.
- (19) 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.
- (20) 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.
- (21) 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.
- (22) 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.
- (23) SB 1402 Statement

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Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This letter or includes this information, which is also 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. We consider all relevant circumstances in determining penalties, including the eight factors specified in Health and Safety Code (H&SC) sections 42403 and 43024.

TRU Violations

The per-unit penalty for the TRU violations involved in this case is a maximum of \$1,000 per unit per day for strict liability violations or \$10,000 per unit per day for negligent or intentional violations pursuant to H&SC section 39674. The penalty obtained for all of the TRU violations involved in this case is \$9,500.00 and is itemized below.

The penalty obtained for non-compliant TRUs is \$9,500.00 for 13 non-compliant TRUs operated by SEASIDE or \$750.00 for each violation. This penalty is reduced because this was an unintentional first time violation and the violator cooperated with the investigation and has since brought the majority of their fleet into compliance with the TRU regulation and will bring the remainder of the fleet into compliance within 90 days of the execution of this Agreement.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

TRU Violations

The penalty provision being applied for the Air Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Unit and TRU Generator Set (Title 13, CCR, section 2477 et seq.) violations (including registration and labeling) is H&SC section 39674 because the TRU rule is an Air Toxic Control Measure adopted pursuant to authority contained in H&SC section 39650-39675. SEASIDE, as an owner of TRUs, failed to bring 13 TRUs in their fleet into compliance with the in-use emissions standards.

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.

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TRU 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 TRUs involved and their individual emission rates are not known, it is not practicable to do so.

- (24) SEASIDE acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC sections 42403 and 43024, 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 being assessed under a provision of law that prohibits the emission of pollutants at a specified level. However, since the hours of operation of the non-compliant units involved and their individual emission rates are not known, it is not practicable for ARB to quantify the excess emissions.
- (25) 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 negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.
- (26) The penalty was based on confidential settlement communications between ARB and SEASIDE 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 SEASIDE and reflects ARB's assessment of the relative strength of its case SEASIDE the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that SEASIDE may have secured from its actions.
- (27) Now therefore, in consideration of the payment on behalf of SEASIDE to the Air Pollution control Fund and the Peralta Colleges Foundation, the ARB hereby releases SEASIDE and their principals, officers, agents, predecessors and successors from any and all claims, the ARB may have or have in the future based on the circumstances described in paragraph (1) - (4) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

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California Air Resources Board

By: 

Name: James R. Ryden, Chief

Title: Enforcement Division

Date: 12/16/13

SEASIDE REFRIGERATED
TRANSPORT, INC.

By: 

Name: DIANNA JOHNSON-BEGGS

Title: CORPORATE DIRECTOR

Date: 12/10/13