

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 TRIMAC TRANSPORTATION INC. (hereinafter "TRIMAC"), 15333 JFK Boulevard, Houston, Texas 77032.

I. RECITALS

- (1) California Health and Safety Code (HSC) §§ 39650-39675 mandate the reduction of emissions of 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, as codified in California Code of Regulations, title 13, section 93000 (17 CCR § 93000). In 2009, the ARB adopted the Truck and Bus Regulation (13 CCR § 2025) to reduce emissions of toxic PM from in-use on-road diesel-powered vehicles.
- (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) TRIMAC has elected to meet the requirements of the Engine Model Year Compliance Schedule provided for in 13 CCR § 2025(g).
- (4) 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 2005 through 2006 engine model years by January 1, 2014.
- (5) ARB has documented that TRIMAC failed to meet PM BACT requirements for all 2005 through 2006 engine model years by January 1, 2014.
- (6) 13 CCR § 2025(w), Disclosure of Regulation Applicability, requires that any person residing in California selling a vehicle with an engine subject to this regulation provide the specified disclosure in writing to the buyer on the bill of sale, sales contract addendum, or invoice.
- (7) 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)."

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- (8) 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).
- (9) 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.
- (10) ARB has documented that TRIMAC failed to include the Disclosure of Regulation Applicability on the bill of sales, contract addendums, or invoices, in violation of 13 CCR § 2025(w).
- (11) ARB has documented that TRIMAC, 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 2014 over an undetermined number of days, subjecting TRIMAC to civil penalties pursuant to HSC § 39674.
- (12) ARB has documented that TRIMAC, as a broker, dispatched trucks that are not compliant with the emissions standards set forth in the Truck and Bus Regulation (13 CCR § 2025) in 2014 over an undetermined number of days, subjecting TRIMAC to civil penalties pursuant to HSC § 39674.
- (13) In order to resolve these alleged violations, TRIMAC has taken, or agreed to take, the actions enumerated below under "RELEASE." Further, ARB accepts this Agreement in termination and settlement of this matter.
- (14) 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, the ARB and TRIMAC agree as follows:

II. TERMS AND RELEASE

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

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- (1) Upon execution of this Agreement, the sum of thirty-three thousand and four hundred dollars (\$33,400.00) shall be paid on behalf of TRIMAC no later than June 2, 2016, as follows:
- \$25,050.00 payable to the Air Pollution Control Fund
 - \$8,350.00 payable to the Peralta Colleges Foundation

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, CA 95812

Please send the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

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

- (2) 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 TRIMAC 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 TRIMAC by ARB arising from the facts described in recital paragraphs (1) through (13) 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.
- (3) TRIMAC 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/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) TRIMAC 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

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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 TRIMAC uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, TRIMAC 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 TRIMAC to ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.
- (c) In case TRIMAC 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, TRIMAC 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 TRIMAC to ARB within six months of the date of this settlement and
- (3) TRIMAC shall not violate the Truck and Bus Regulation as codified in 13 CCR § 2025.
- (4) TRIMAC shall verify that each hired or dispatched vehicle is in compliance with the Truck and Bus Regulation as codified in 13 CCR § 2025.
- (5) This Agreement shall apply to and be binding upon TRIMAC, 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.
- (6) This Agreement constitutes the entire agreement and understanding between ARB and TRIMAC concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and TRIMAC concerning the subject matter hereof.
- (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 all parties to this Agreement.
- (8) 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.
- (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.

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- (10) 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.
- (11) 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 \$9,500.00 or \$500.00 per month of violation:

- \$2,000 for 1 vehicle (VIN# 1FUJF0CV46LN72117) with a 2005 through 2006 model year engine (4 months in violation); and
- \$3,500 for 1 vehicle (VIN# 1FUJF0CV87LN72168) with a 2005 through 2006 model year engine (7 months in violation); and
- \$4,000 for 1 vehicle (VIN# 2HSCESBR97C469300) with a 2005 through 2006 model year engine (8 months in violation).

The penalty obtained for the Truck and Bus violations involved in this case for failure to disclose appropriate language on the bills of sales, sales contract addendums, or invoices is \$900.00, or \$150.00 per vehicle per violation for 6 vehicles.

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 records is \$20,000.00 for 4 hired fleets or independent vehicles ultimately determined not to be in compliance with the Truck and Bus Regulation, or \$5,000.00 per noncompliant fleet hired or independent vehicles dispatched.

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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 \$3,000.00 for 6 hired fleets or \$500.00 per fleet hired or dispatched.

The penalties were 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 TRIMAC failed to bring their diesel fleet into compliance by the deadlines set forth in 13 CCR § 2025(g). TRIMAC also failed to include the Disclosure of Regulation Applicability on the bill of sales, contract addendums, or invoices. In addition, TRIMAC failed to verify compliance for each vehicle hired or dispatched and to maintain records as required by 13 CCR §§ 2025(x)(2) and failed to dispatched trucks that are not compliant with the emissions standards set forth in the Truck and Bus Regulation.

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.

- (12) TRIMAC 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.

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- (13) 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.
- (14) The penalty was based on confidential settlement communications between ARB and TRIMAC that ARB does not retain in the ordinary course of business. The penalty is the product of an arm's length negotiation between ARB and TRIMAC and reflects ARB's assessment of the relative strength of its case against TRIMAC, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that TRIMAC may have secured from its actions.
- (15) Now therefore, in consideration of the payment on behalf of TRIMAC to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases TRIMAC 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 (13) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

Signature: 
Print Name: Ellen M. Peter
Title: Chief Counsel
Date: May 27, 2016

Signature: 
Print Name: Craig A. Bolognino
Title: Vice President
Date: 5-May-2016