

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 WEST COAST REFRIGERATED TRUCKING, INC. (hereinafter "WCRT"), P.O. Box 6464, Oxnard, California 93031.

I. RECITALS

- (1) California Health and Safety Code (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 Air Resources Board 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 this toxic particulate matter. On-Road vehicles are regulated under section 2025 within title 13 of the California Code of Regulations (CCR).
- (2) Title 13 CCR, section 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 section 2025(g) or fleets that report may instead comply with the phase-in option of section 2025(i)."
- (3) Failure to comply with the requirements of title 13 CCR, section 2025 is a violation of state law resulting in penalties. California HSC sections 39674(a) and (b) authorize civil penalties of up to ten thousand dollars (\$10,000) for each day in which the violation occurs, for the violation of the programs for the regulation of toxic air contaminants.
- (4) WCRT has elected to meet the requirements of the Engine Model Year Compliance Schedule provided for in title 13 CCR, section 2025(g)(3).
- (5) Title 13 CCR, section 2025(g)(3) requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs. meet PM Best Available Control Technology (BACT) requirements for all 2003-2004 model year engines and 1993 model year and older engines by January 1, 2012, and for all 2005-2006 model year engines and 1994-1999 model year engines by January 1, 2013.
- (6) The ARB has documented that WCRT failed to meet PM BACT requirements for all 2005-2006 model year engines and 1994-1999 model year engines by January 1, 2013.
- (7) In order to resolve these alleged violations, WCRT has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, the ARB

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accepts this Agreement in termination and settlement of this matter.

- (8) 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 WCRT agree as follows:

II. TERMS AND RELEASE

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

- (1) Upon execution of this Agreement, WCRT shall pay a civil penalty of \$4,500.00. Payment shall be made in check form as described below, and payments shall be made in two payments beginning on **May 20, 2013**.

SETTLEMENT AGREEMENT AND RELEASE ARB AND WCRT:

Payment Due Date:	In the Amount of and Paid to:
(1) May 20, 2013	\$1,125.00 paid to Peralta Colleges Foundation and \$1,125.00 paid to California Air Pollution Control Fund
(2) June 20, 2013	\$2,250.00 paid to California Air Pollution Control Fund

Please submit the signed settlement agreement and checks to:

Dr. Xiangyi Li, Ph.D., Air Resources Engineer
Air Resources Board, Enforcement Division
Diesel Program Enforcement Branch
9480 Telstar Avenue, Suite 4
El Monte, CA 91731

- (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, WCRT 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 WCRT, 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 WCRT, 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 WCRT, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of WCRT's, its subsidiary, or parent company's properties, or if any deposit account or other property of WCRT, 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 WCRT, 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 WCRT 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 WCRT by ARB arising from the facts described in recital paragraphs 1 – 6 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) WCRT shall not violate HSC sections 43701 *et seq.*, 44011.6 *et seq.*, and title 13 CCR, sections 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (6) WCRT 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) WCRT 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 WCRT 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, WCRT shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET I course within the past four years. This

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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) WCRT 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) WCRT 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 WCRT uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, WCRT 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 WCRT to the ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.
- (8) WCRT shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to the ARB within 45 days of this agreement.
- (9) Each 1974 or newer diesel powered heavy-duty vehicle in the WCRT fleet shall comply with the emission control label (ECL) requirements set forth in the title 13 CCR section 2183(c).
- (10) WCRT shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in title 13 CCR section 2485, within 45 days of this Agreement.
- (11) WCRT shall comply with the Truck and Bus regulation as codified in title 13 CCR, section 2025. Within 45 days of the execution of this Agreement, WCRT shall submit the proof of compliance to Dr. Xiangyi Li, Ph.D., ARE, Air Resources Board, Enforcement Division, 9480 Telstar Avenue Suite 4, El Monte, CA 91731.
- (12) WCRT shall not violate the Truck & Bus regulation as codified in title 13 CCR, section 2025 *et seq.*

- (13) This Agreement shall apply to and be binding upon WCRT, 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 WCRT concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and WCRT 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 the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code 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.

Truck and Bus Violations

The per unit penalty for the Truck and Bus violations involved in this case is a maximum of \$1,000 per vehicle per day for strict liability violations or \$10,000 per vehicle per day for negligent or intentional violations. The penalty obtained for the Truck and Bus violations involved in this case for

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failure to meet the requirements of the engine model year compliance schedule is \$4,500 or \$750 per vehicle per month for 2 trucks in violation for 3 months.

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 (title 13 CCR, section 2025) violations in this case is HSC section 39674 because the Truck and Bus regulation is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC section 39002 et seq., 39650-39675 and because WCRT failed to bring their diesel fleet into compliance by the deadlines set forth in title 13 CCR, section 2025(g)(3).

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.

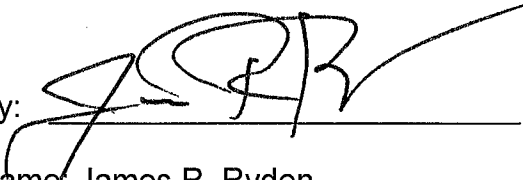
Truck and Bus Violations

The provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the non-compliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

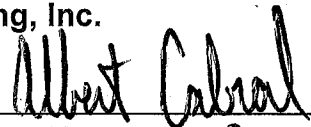
- (20) WCRT acknowledges that ARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 43024, has explained the manner in which the penalty amount was calculated, has identified the provision 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. The penalty was discounted based on the fact that it was a first time violation and the violator made unusually diligent efforts to comply and to cooperate with the investigation. 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 WCRT that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and WCRT and reflects ARB's assessment of the relative strength of its case against WCRT, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that WCRT may have secured from its actions.
- (23) Now therefore, in consideration of the payment on behalf of WCRT to the California Air Pollution Control Fund and the Peralta Community College District, the ARB hereby releases WCRT 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) through (6) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement

California Air Resources Board

By: 
Name: James R. Ryden
Title: Chief Enforcement Division
Date: 5/28/13

**West Coast Refrigerated
Trucking, Inc.**

By: 
Name: Albert Cabral
Title: President
Date: 5/14/13

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