

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 the Eastern Contra Costa Transit Authority (hereinafter "ECCTA"), main office located at 801 Wilbur Avenue, Antioch, CA 94509.

I. RECITALS

- (1) California Health and Safety Code (*H&SC*) 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, Chapter 3.5, Sections 2180-2188, Title 13, California Code of Regulations (CCR).
- (2) *H&SC* 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) Title 13, CCR sections 2190 et seq. were adopted under the authority of *H&SC* 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) Title 13, CCR sections 2190 et seq. authorize 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) Title 13, CCR 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) *H&SC* 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 of not to exceed five hundred dollars (\$500.00) per vehicle."
- (7) The ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.
- (8) The Fleet Rule for Transit Agencies - Urban Bus Requirements, Section 2023.1 (e)(3)(A) of Title 13 of the CCR, states that, no later than January 1, 2007, the diesel Particulate Matter (PM) emission total for a transit agency's on the diesel path shall be no more than 15 percent of its diesel PM emission total as of January 1, 2002 or equal to 0.01 g/bhp-hr times the total number of current diesel-fueled active fleet buses, whichever is greater. The ECCTA reported to the ARB that the ECCTA diesel PM emission total as of January 1, 2007 was more than 15 percent of its diesel PM emission total on January 1, 2002.
- (9) The Fleet Rule for Transit Agencies - Transit Fleet Vehicle Requirements, Section 2032.2 (b)(1) of Title 13 of the CCR, states that no later than December 31, 2007, the diesel PM emission total for a transit agency's transit fleet vehicle fleet shall be no more than 60 percent of its diesel PM emission total on January 1, 2005. The ECCTA reported to the ARB that the ECCTA diesel PM emission total as of December 31, 2007 was more than 60 percent of its diesel emission total on January 1, 2005.
- (10) 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.
- (11) ARB contends that if the facts described in recital paragraphs (8)– (9) were proven, civil penalties could be imposed against ECCTA, as provided in *H&SC* section 39674.
- (12) ECCTA 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 ARB not filing a legal action against ECCTA, for the Violations alleged above, ARB and ECCTA agree as follows:

(1) Upon execution of this Agreement, ECCTA shall pay a civil penalty of \$17,000.00. Payment shall be made in check form as described below and the full amount shall be submitted along with the signed Settlement Agreement and Release.

- \$12,750.00 to the **California Air Pollution Control Fund**.
- \$ 4,250.00 to the **Peralta Community College District**.

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

Mr. Randy M. Rhondeau, Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

- (2) ECCTA shall not violate *H&SC* Sections 43701 et seq. and 44011.6 et seq. and Title 13, CCR Sections 1956.1 et seq., 2020, 2023 et seq., 2180 et seq., 2190 et seq., and 2485 et seq.
- (3) ECCTA 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.
- (4) Each 1974 or newer diesel powered heavy-duty vehicle in the ECCTA fleet shall comply with the emission control label (ECL) requirements set forth in the CCR, Title 13, Section 2183 (c).
- (5) ECCTA shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in CCR, Title 13, Section 2485, within 45 days of execution of this Agreement.
- (6) No later than June 1, 2011, ECCTA shall submit the proof of compliance with the Fleet Rule for Transit Agencies-Transit Fleet Vehicle Requirements and the Fleet Rule for Transit Agencies- Urban Bus requirements to the ARB.
- (7) No later than June 1, 2011 the diesel PM emission total for ECCTA's transit fleet vehicle fleet shall be no more than 20 percent of its diesel PM emission total on January 1, 2005, or equal to 0.01 g/bhp-hr times the total number of transit fleet vehicles in the current fleet, whichever is greater.
- (8) Beginning June 1, 2011, ECCTA's transit fleet vehicles' NOx average shall not exceed 2.4 g/bhp-hr or ECCTA shall retire all 2001 and earlier model year engines in transit fleet vehicles by June 1, 2011.

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- (9) ECCTA shall complete the annual reporting requirements for transit agencies set forth in CCR, Title 13, Section 2023.4. These reports shall be submitted by the January 31 deadline annually through the year 2016.
- (10) This Agreement shall apply to and be binding upon ECCTA, 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.
- (11) This Agreement constitutes the entire agreement and understanding between ARB and ECCTA, concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and ECCTA, concerning the subject matter hereof.
- (12) 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.
- (13) 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.
- (14) 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.
- (15) 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.
- (16) Now, therefore, in consideration of the payment by ECCTA, in the amount of seventeen thousand dollars (\$17,000.00), ARB hereby releases ECCTA 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 (8)– (9), above. The undersigned represent that they have the authority to enter into this Agreement.
- (17) 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 Health and Safety Code sections 42403 and 43024.

Transit Fleet and Urban Bus Vehicle Violations

The per vehicle penalty for the Transit Fleet Vehicle (TFV) and Urban Bus (UB) 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 TFV and UB violations involved in this case is \$17,000 or \$500.00 per vehicle per violation. The penalty was discounted based on the fact that this was a first time violation and the violator made unusually 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.

TFV and UB Violations

The penalty provision being applied for the TFV and UB regulations is Health and Safety Code Section 39764 because the TFV and UB rules are a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in the Health and Safety Code Section 39660, et seq. and because ECCTA failed to use the best available control technology on 34 vehicles as required by the TFV and UB rules, Title 13, CCR, section 2023 et seq., over an unspecified number of days during the years of 2008 through 2010.

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.

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

- (18) ECCTA 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 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.
- (19) 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/vehicle basis.

- (20) The penalty was based on confidential settlement communications between ARB and ECCTA that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and ECCTA and reflects ARB's assessment of the relative strength of its case against ECCTA, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that ECCTA may have secured from its actions.

California Air Resources Board

By: Ellen M. Peter

Name: Ellen M. Peter

Title: Chief Counsel

Date: 2/23/2011

Eastern Contra Costa Transit Authority

By: Jeanne Krieg

Name: Jeanne Krieg

Title: CEO

Date: 2-2-11