

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 JKC Trucking INC. (hereinafter "JKCTI") with its principal place of business at 5450 S Center Avenue Summit, Illinois, 60501.

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) CCR, Title 13, Section 2183 (c) requires that "No 1974 or newer diesel powered heavy-duty commercial vehicle shall operate in California without evidence that, at the time of manufacture, the installed engine met emission standards at least as stringent as applicable federal emission standards for the model year of the engine. The ARB shall base its determination on whether an engine meets the above requirement by inspecting the Emission Control Label (ECL) affixed to the vehicle's engine."
- (3) *H&SC*, Section 39650-39675 mandates the reduction of the emission 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 (ARB) identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. Transportation refrigeration units (TRUs) are powered by diesel fueled engines that emit toxic particulate matter. TRUs are controlled under section 2477 within chapter 9, division 3, Title 13 of the California Code of Regulations (CCR).
- (4) CCR, Title 13, 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.
- (5) CCR, Title 13, Section 2477(b) (1) (B) states that the TRU rule applies to owners and operators of diesel fueled TRUs and TRU gen sets including operators and owners of non-California-based TRUs and gensets.

- (6) The ARB Enforcement Division has documented that JKCTI, failed to bring their TRU in compliance with the in-use performance standard.
- (7) 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
- (8) ARB contends that if the facts described in recital paragraphs (1) – (6) were proven civil penalties could be imposed against JKCTI, as provided in *H&SC* sections 39674.
- (9) JKCTI 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 JKCTI, for the Violations alleged above, ARB and JKCTI agree as follows:

- (1) Upon execution of this Agreement, the sum of one thousand (\$1,000) shall be paid on behalf of JKCTI as follows:
 - \$ 750.00 to the **California Air Pollution Control Fund**.
 - \$ 250.00 to the **Peralta Community College District**
 - All Payments and documents shall be sent to the attention of:

Eusene Claire Kim Yi, Air Resources Engineer
9480 Telstar Ave. Suite 4
El Monte, CA 91731

- (2) If the Attorney General files a civil action to enforce this settlement agreement, JKCTI shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (3) JKCTI shall complete Low NOx Software Upgrades (reflash) on all applicable 1993-1998 model year heavy duty diesel engines operating in California and report back to ARB, within 45 days of this agreement.

- (4) Each 1974 or newer diesel powered vehicles in the JKCTI fleet shall comply with the emission control label (ECL) requirements set forth in the CCR, Title 13, Section 2183(c).
- (5) JKCTI shall instruct all employees who operate diesel fueled commercial vehicles to comply with the idling regulations set forth in CCR, Title 13, Section 2485, within 45 days of this Agreement.
- (6) JKCTI shall comply with the TRU in-use performance standards set forth in Title 13, CCR, Section 2477 (e)(1) (A). Within 90 days of execution of this Agreement, JKCTI shall submit the proof of the compliance with the TRU ATCM to Ms. Eusene Claire Kim YI, ARB Enforcement Division, 9480 Telstar Ave Suite 4, El Monte, CA 91731.
- (7) JKCTI shall not violate CCR, Title 13, Section 2477 Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Unit (TRU) and TRU Generator Sets, and Facilities where TRUs operate.
- (8) This Agreement shall apply to and be binding upon JKCTI 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.
- (9) This Agreement constitutes the entire agreement and understanding between ARB and JKCTI concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and JKCTI, concerning the subject matter hereof.
- (10) 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.
- (11) 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.
- (12) 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.
- (13) 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.

(14) SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see *H&SC* 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 *H&SC* sections 42403 and 43024.

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 the TRU violations involved in this case is \$1,000.00 for 1 unit after considering the factors specified in *H&SC* section 43024.

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

The penalty provision being applied for the TRU ATCM (Title 13, CCR, section 2477) violations in this case is *H&SC* section 39674 because the TRU ATCM is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in *H&SC* section 39660, et seq. and because JKCTI failed to apply for ARB identification numbers for its TRUs with the ARB Equipment Registration (ARBER) system and failed to bring TRUs in its fleet into compliance by the deadlines set forth in the TRU ATCM.

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 trucks and TRUs involved and their individual emission rate is not known, it is not practicable to quantify the excess emissions

- (15) JKCTI acknowledges that ARB has complied with SB 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.
- (16) 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 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.
- (17) The penalty was based on confidential settlement communications between ARB and JKCTI 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 JKCTI and reflects ARB's assessment of the relative strength of its case against JKCTI, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that JKCTI may have secured from its actions.
- (18) Now, therefore, in consideration of the payment by JKCTI, in the amount of one thousand dollars (\$1,000), ARB hereby releases JKCTI 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 (1) – (6) above. 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: 1/10/10

JKC Trucking INC.

By: 

Name: JANICE FRACZER
Title: SAFETY DIRECTOR
Date: 01/04/11