

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 Versacold Logistics LLC. (hereinafter "Versacold") 2050 Lapham Drive, Modesto, CA 95355

I. RECITALS

- (1) Health and Safety Code, 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).
- (2) CCR, Title 13, section 2477 (b) (2) states that the TRU rule applies to facilities in California with 20 or more loading dock doors serving refrigerated areas where perishable goods are loaded or unloaded for distribution on trucks, trailers, shipping containers, or rail cars that are equipped with TRUs and TRU gen sets and that are owned, leased, or contracted by the facility, its parent company, affiliate, or subsidiary that are under facility control.
- (3) CCR, Title 13, section 2477 (f) (2) sets forth the requirements for facility monitoring, recordkeeping, and reporting. Subsection 2477 (f) (2) (A) requires that all facilities subject to this subsection submit a report by January 31, 2006. Subsections 2477 (f) (2) (A) (1) through (12) specify the information to be provided in the January 31, 2006 report.
- (4) The ARB, with the cooperation of Versacold, has documented that Versacold failed to submit a TRU facilities report on or before January 31, 2006.
- (5) Failure to report is a violation of state law resulting in penalties. Health and Safety Code, Section 39674, authorize civil or administrative penalties not to exceed one thousand dollars (\$1,000) or ten thousand dollars (\$10,000) for each day that the violation occurs.
- (6) In order to resolve these alleged violations, Versacold has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, the ARB accepts this Agreement in termination and settlement of this matter.
- (7) 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 Versacold agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, the sum of twenty thousand three hundred twenty five dollars (\$20,325.00) shall be paid on behalf of Versacold within seven (7) business days following execution of this agreement, as follows:

- \$15,243.75 to the **California Air Pollution Control Fund**
- \$5,081.25 to the **Peralta Community College District**

Please submit the signed settlement agreement and checks to:

Mr. Eric Brown, Investigator/Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

- (2) Versacold shall not violate CCR, Title 13, Section 2477.
- (3) This Agreement constitutes the entire agreement and understanding between ARB and Versacold concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Versacold concerning the subject matter hereof.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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.

(8) 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 Health and Safety Code section 39619.7). This Agreement 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 factors specified in Health and Safety Code sections 42403 and 43024.

The per facility penalty in this case is a maximum of \$1,000 per facility per day for strict liability violations. We are seeking a total penalty from you of \$75 per day that Versacold's report was late. The report including summer and winter hour data was submitted 271 days late for a total penalty of \$20,325.00.

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 in this case is Health and Safety Code section 39674 because you failed to comply with the Air Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units and TRU Generator Sets codified in Title 13, California Code of Regulations section 2477 which was adopted under authority of Health and Safety Code sections 39650 - 39675.

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 penalty is not being assessed under a provision of law that prohibits the emission of pollution at a specified level.

- (9) Versacold 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 facility penalty, rather than a per vehicle or per unit penalty), 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 does not prohibit the emission of pollutants at a specified level.

- (10) 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 facility basis. Versacold is a first time violator and cooperated with the investigation and resolution of this matter.
- (11) The penalty reflects ARB's assessment of the relative strength of its case against Versacold, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Versacold may have secured from its actions.
- (12) It is understood and agreed that this agreement is a compromise of disputed claims described in the recitals above and that nothing in this Agreement shall be construed as an admission of liability by any party. The parties specifically deny any liability in this matter and in executing this Agreement intend merely to avoid further litigation or other controversy.
- (13) Now therefore, in consideration of the payment on behalf of Versacold to the California Air Pollution Control Fund and the Peralta Community College District, the ARB hereby releases Versacold and their principals, officers, agents, predecessors and successors from any and all claims for past violations of CCR, Title 13, section 2477, the ARB may have based on the circumstances described in paragraph (1-7) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: Ellen M. Peter

Name: Ellen M. Peter

Title: Chief Counsel

Date: 1/2/11

Versacold Logistics LLC

By: Dan M. Petroni

Name: DAN M. PETRONI

Title: GENERAL MANAGER

Date: DEC 16, 2010