

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and CR&R Incorporated (CR&R), with its principal location at 11292 Western Avenue, Stanton, California 90680 (collectively known as the "Parties," or individually, as a "Party").

### **LEGAL BACKGROUND**

- (1) Purpose. The California Health and Safety Code mandates the reduction of emission of air pollution from motor vehicles, creates the Motor Vehicle Inspection Program, and requires CARB to adopt regulations that require owners and operators of heavy-duty vehicles to perform regular inspections of their vehicles for excess emissions. (Health & Saf. Code §§ 43013, 43018, 43701, 44011.6.)
- (2) Regulation. CARB adopted the "*Periodic Smoke Inspections of Heavy-Duty Diesel-Powered Vehicles*" Regulation (Cal. Code Regs., tit. 13, §§ 2190 et seq.) (PSIP Regulation) to reduce excess smoke opacity emissions from heavy-duty vehicles.
- (3) Regulatory Provisions. The PSIP Regulation requires owners and operators of heavy-duty diesel vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate within the State of California to conduct annual smoke opacity inspections (or on-board diagnostic review for model year 2013 engines or newer) of their vehicles by a CARB-approved trained smoke tester, using smoke test equipment and procedures that comply with the Society of Automotive Engineers (SAE) procedures J1667, "Snap Acceleration Smoke Test Procedure for Heavy-Duty Powered Vehicles." Owners and Operators must also keep records of this data and provide it to CARB upon request. (Cal. Code Regs., tit. 13, §§ 2190-2194.)
- (4) Penalty Provisions. Failure to comply with the PSIP regulatory requirements is a violation of state law that may result in penalties up to forty-seven thousand three hundred sixty-three dollars (\$47,363.00 USD) for each strict liability violation of the PSIP Regulation, respectively, for each day in which the violation occurs. (Health & Saf. Code, § 43016; Cal. Code Regs., tit. 13, § 2190 et seq.)

### **CASE BACKGROUND**

- (5) Business Entity. At all relevant times, CR&R was organized under the laws of California as a business entity and conducted business in the State of California.
- (6) Allegations. CARB alleges CR&R violated the PSIP Regulation by owning or operating heavy-duty vehicles with gross vehicle weights greater than 6,000 pounds in California and failing to provide records to CARB upon request, resulting in 132 violations as outlined in NOV 00424. CARB alleges CR&R violated

the PSIP Regulation by owning or operating heavy-duty vehicles with gross vehicle weights of greater than 6,000 pounds in California; and failing to repair and retest vehicles that failed the opacity test within 45 days of the failure, resulting in 42 violations, as outlined in NOV 00424. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against CR&R for each and every vehicle involved in the violations and each day.

- (7) Acknowledgment. CR&R admits to the facts in paragraphs 1 through 6 but denies any liability resulting from said allegations.
- (8) Consideration. 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 alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, CR&R has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

### **TERMS AND CONDITIONS**

In consideration of CARB not filing a legal action against CR&R for the alleged violations referred to above in the Legal Background and Case Background, and CR&R's agreement to complete all terms and conditions set forth below, CARB and CR&R agree as follows:

- (9) Settlement Amount. CR&R shall pay a civil penalty of two hundred eighty-two thousand dollars (\$282,000.00 USD) within 30 days from the Notification Date.
- (10) Notification Date. The date upon which CARB notifies CR&R according to Paragraph 15 (Notices), that the Settlement Agreement is fully executed or when CARB sends the fully executed Settlement Agreement to CR&R.
- (11) Civil Penalty Payment Method. CR&R shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to the "California Air Resources Board," using instructions provided separately by CARB in a Payment Transmittal Form. CR&R is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to CR&R in accordance with Paragraph 15 (Notices).
- (12) Other Relief. CR&R shall comply with the following: Attend CARB's Tester Training for California's Heavy-Duty Inspection and Maintenance Program (HDIM) at

<https://ww2.arb.ca.gov/our-work/programs/inspection-and-maintenance-program/hd-im-tester-training-course-and-exam> or another CARB approved course and pass the exam from CARB's Tester Training to become a credentialed tester.

- (a) CR&R shall have each fleet maintenance manager (or equivalent) attend CARB's Tester Training for California's HDIM Program or another CARB approved course and become a credentialed tester. The credentials shall be submitted to CARB within six months of the date of this Settlement Agreement and be maintained in each applicable employee's file for the term of his or her employment.
  - (b) If CR&R uses a contractor to perform the annual testing required under the HDIM Regulation, in addition to having the fleet maintenance manager (or equivalent) becoming a credentialed tester, CR&R shall obtain proof that the contractor's staff conducting testing as required by the HDIM Regulation is a credentialed HD I/M tester. This proof of HDIM credentials shall be provided to CARB as required by this Settlement Agreement.
- (13) Other Relief. CR&R shall maintain compliance with the HDIM. CARB acknowledges that CR&R has already submitted copies of all PSIP Regulation compliance records for year 2022 and has therefore complied with that requirement.
- (a) CARB reserves the right to visit any fleet locations of CR&R at any time to conduct compliance audits for the PSIP, SWCV, and HDIM regulations, or any other applicable CARB program.
- (14) Documents. CR&R shall promptly email or mail the signed and dated Settlement Agreement to the CARB address or email in Paragraph 15 (Notices).
- (15) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board  
Enforcement Division / Settlement Agreements  
Diesel Programs Enforcement Branch/Specialized Fleet Enforcement  
Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
[Settlement\\_Agreement@arb.ca.gov](mailto:Settlement_Agreement@arb.ca.gov)

As to CR&R:  
Mr. John McNamara  
CR&R Incorporated  
11292 Western Avenue  
Stanton, California 90680  
[jmcnamara@crrmail.com](mailto:jmcnamara@crrmail.com)

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (16) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, CR&R shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (17) Repeat Violations. CR&R agree to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (18) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 8 pages and 36 numbered paragraphs.
- (19) Binding Effect. This Settlement Agreement binds CR&R and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, and CARB, and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (20) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (21) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (22) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.

- (23) Choice of Law. This Settlement 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.
- (24) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 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 the benefit of a governmental unit.
- (25) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (26) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.
- (27) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (28) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (29) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile, or photocopied signatures shall be considered as valid signatures.
- (30) Release. In consideration of full payment of the civil penalty and all other undertakings above, CARB hereby releases CR&R and its principals, officers, receivers, trustees, successors and assignees, subsidiary, and parent corporations, from any claims CARB may have based on the circumstances described in Paragraph 6 (Allegations) above.

- (31) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

### **PENALTY BASIS**

- (32) Per Unit Penalty. The total penalty for the PSIP violations is \$282,000.00 USD. The per unit or per vehicle penalty in this case is a maximum of forty-seven thousand three hundred sixty-three dollars (\$47,363.00 USD) per day for each day the vehicle is in violation of the Health and Safety Code section 43016 and PSIP Regulation. (Cal. Code Regs., tit.13, § 2190 et seq.)

(a) The penalty of \$198,000.00 over an unspecified number of days of violation is for 132 violations of the PSIP Regulation for failing to provide a test for a calendar year 2020 or 2021. The per unit penalty in this case is \$1,500.00 per vehicle per violation.

(b) The penalty of \$84,000.00 over an unspecified number of days of violation is for 42 violations of the PSIP Regulation for failing to repair and conduct a retest within 45 days of a failed test. The per unit penalty in this case is \$2,000.00 per vehicle per violation.

- (33) Emissions. The provisions cited above pursuant to the PSIP regulation do prohibit emissions above a specified level. Without information on usage and emission rates, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the vehicle did not meet the regulatory requirements, all of the emissions from it were excess and illegal.

- (34) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.

- (35) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by CR&R, or confidential settlement communications.
- (36) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
  - (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against CR&R with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against CR&R with respect to:
    - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
    - (ii) Facts that were not disclosed by CR&R to CARB.
    - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
    - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
    - (v) Any criminal liability.
    - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
  - (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, CR&R shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
  - (d) This Settlement Agreement does not limit or affect the rights of CR&R or of CARB against any third parties not covered by this Settlement Agreement,

nor does it limit the rights of third parties not covered by this Settlement Agreement against CR&R, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.

- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. CR&R is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; CR&R's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that CR&R's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: /S/

Name: Ellen M. Peter

Title: Chief Counsel

Date: April 3, 2024

**CR&R Incorporated**

Signature: /S/

Name: John McNamara

Title: Vice President of Environmental Compliance

Date: March 26, 2024