

## **SETTLEMENT AGREEMENT AND RELEASE**

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB") 1001 I Street, Sacramento, California 95814, and A RUIZ CONSTRUCTION COMPANY & ASSOCIATES, INC. (hereinafter "A RUIZ CONSTRUCTION"), 1601 Cortland Avenue, San Francisco California 94110-5716.

### **I. RECITALS**

- (1) HSC §§ 39650-39675 mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive ten-year scientific assessment process, CARB 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 toxic PM. On-road vehicles are controlled under the Truck and Bus regulation, as codified in 13 CCR § 2025.
- (2) 13 CCR § 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 13 CCR § 2025(g) or fleets that report may instead comply with the phase-in option of 13 CCR § 2025(i)."
- (3) Failure to comply with the requirements of 13 CCR § 2025 is a violation of state law resulting in penalties. HSC §§ 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) or ten thousand dollars (\$10,000), respectively, for each day in which the violation occurs.
- (4) A RUIZ CONSTRUCTION has elected to meet the requirements of the Engine Model Year Compliance Schedule provided for in 13 CCR § 2025(g).
- (5) 13 CCR § 2025(g) requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs. (heavier vehicles) meet PM Best Available Control Technology (BACT) requirements for all 1996 through 1999 model year engines by January 1, 2012, all 2000 through 2004 model year engines by January 1, 2013, and all 2005 and 2006 model year engines by January 1, 2014, and upgrade to a 2010 model year emissions equivalent engine for all 1993 and older model year engines by January 1, 2015, and all 1994 and 1995 model year engines by January 1, 2016
- (6) CARB has documented that A RUIZ CONSTRUCTION failed to meet PM BACT requirements for one 1996 through 1999 model year engines by January 1, 2012, and one 2000 through 2004 model year engines by January 1, 2013.

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- (7) 13 CCR § 2025(f) requires that owners of diesel vehicles with a GVWR greater than 14,000 lbs. and less than or equal to 26,000 lbs. (lighter vehicles) upgrade to a 2010 model year emissions equivalent engine for all 1995 and older model year engines by January 1, 2015, and all 1996 model year engines by January 1, 2016.
- (8) CARB has documented that A RUIZ CONSTRUCTION failed to upgrade to a 2010 model year emissions equivalent engine for two 1995 and older model year engines by January 1, 2015, and one 1996 model year engines by January 1, 2016.
- (9) 13 CCR § 2025(r) sets forth the requirements for reporting all vehicles with engines subject to the regulation if the owner of a fleet has elected to utilize the compliance options of 13 CCR §§ 2025(f)(4), 2025(g)(3), 2025(g)(4), 2025(h), 2025(i), the credits of 13 CCR § 2025(j), and the agricultural provisions of 13 CCR § 2025(m), single-engine and two-engine street sweeper provisions of 13 CCR § 2025(n), extension or exemptions for vehicles used exclusively in NOx exempt areas of 13 CCR § 2025(p)(1), the extension for work trucks of 13 CCR § 2025(p)(2), and the low-use vehicle provision of 13 CCR § 2025(p)(4).
- (10) 13 CCR § 2025(e)(8) states: "All information specified in 13 CCR § 2025(r) must be reported to the Executive Officer."
- (11) A RUIZ CONSTRUCTION has elected to utilize the compliance options/credits/provisions of the low-use vehicle provision of 13 CCR § 2025(p)(4).
- (12) CARB has documented that A RUIZ CONSTRUCTION failed to report all vehicles with engines subject to the regulation for which the fleet owner has elected to utilize the compliance options of 13 CCR § 2025(p)(4).
- (13) In order to resolve these alleged violations, A RUIZ CONSTRUCTION has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, CARB accepts this Agreement in termination and settlement of this matter.
- (14) 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, CARB and A RUIZ CONSTRUCTION agree as follows:

## II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against A RUIZ CONSTRUCTION for the alleged violations referred to above, and A RUIZ

CONSTRUCTION's payment of the penalties set forth in Section 1 below, CARB and A RUIZ CONSTRUCTION agree as follows:

- (1) If the Attorney General files a civil action to enforce this settlement agreement, A RUIZ CONSTRUCTION shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.
- (2) Upon execution of this Agreement, A RUIZ CONSTRUCTION shall pay a civil penalty of \$15,000. Payment shall be made in three payments as described below, beginning on October 9, 2018.

<b>Payment Due Date:</b>	<b>In the Amount of and Payable to:</b>	
October 9, 2018	\$5,000	The Air Pollution Control Fund
November 9, 2018	\$5,000	the Air Pollution Control Fund
January 30, 2019	\$5,000	the Air Pollution Control Fund

The Parties shall exchange signed copies of this Agreement. This Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement. Please send the original signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:

Mr. Stephen Binning  
California Air Resources Board  
Enforcement Division  
P.O. Box 2815  
Sacramento, California 95812

Please submit each payment by the applicable payment due date along with the corresponding "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

California Air Resources Board  
Accounting Office  
P.O. Box 1436  
Sacramento, California 95812-1436

- (3) 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, A RUIZ CONSTRUCTION shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

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- (4) It is agreed that if A RUIZ CONSTRUCTION, 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 A RUIZ CONSTRUCTION, 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 A RUIZ CONSTRUCTION, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of A RUIZ CONSTRUCTION's, its subsidiary, or parent company's properties, or if any deposit account or other property of A RUIZ CONSTRUCTION, 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 A RUIZ CONSTRUCTION, 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.
- (5) 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 A RUIZ CONSTRUCTION for violations of state environmental statutes, and these penalties are payable to and for the benefit of CARB, a governmental unit. Therefore, it is agreed that these penalties imposed on A RUIZ CONSTRUCTION by CARB arising from the facts described in recital paragraphs (1) through (12) 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.
- (6) A RUIZ CONSTRUCTION shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (7) A RUIZ CONSTRUCTION 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 CCDET webpage, [ccdet.org](http://ccdet.org). This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP, the ECL regulation and the HDVIP.
  - (a) A RUIZ CONSTRUCTION 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 CARB 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.

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- (b) If A RUIZ CONSTRUCTION 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, A RUIZ CONSTRUCTION shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET I course within the past four years. This proof of CCDET I completion shall be provided to CARB with PSIP records as required by this Agreement and be maintained with the annual PSIP records.
- (8) A RUIZ CONSTRUCTION shall comply with the following options to attend the CCDET II class (Diesel Exhaust After Treatment and Maintenance), described on the CCDET webpage, [ccdet.org](http://ccdet.org). 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) A RUIZ CONSTRUCTION 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 CARB 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 A RUIZ CONSTRUCTION uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, A RUIZ CONSTRUCTION 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 A RUIZ CONSTRUCTION to CARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.
- (c) In case A RUIZ CONSTRUCTION is unable to find a CCDET II certified contractor within a radius of 25 miles from its yard for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, A RUIZ CONSTRUCTION shall contract only with the authorized verified diesel emission control strategy installer(s) or original equipment manufacturer distributor(s) for the maintenance of DEATS. The proof of the CCDET II completion for the fleet maintenance manager (or equivalent) shall be provided by A RUIZ CONSTRUCTION to CARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.
- (9) A RUIZ CONSTRUCTION shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to CARB within 45 days of this agreement.

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- (10) A RUIZ CONSTRUCTION shall remain in compliance with the ECL regulation as codified in 13 CCR § 2183.
- (11) A RUIZ CONSTRUCTION shall instruct all employees who operate diesel-fueled vehicles to comply with the Idling regulations set forth in 13 CCR § 2485, within 45 days of this Agreement.
- (12) A RUIZ CONSTRUCTION shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025.
- (13) A RUIZ CONSTRUCTION, by December 31, 2018, shall submit proof of compliance with the January 1, 2019 Truck and Bus deadline, for all regulated heavy-duty diesel vehicles, to **Mr. Stephen Binning, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.**
- (14) This Agreement shall apply to and be binding upon A RUIZ CONSTRUCTION, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (15) This Agreement constitutes the entire agreement and understanding between CARB and A RUIZ CONSTRUCTION concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between CARB and A RUIZ CONSTRUCTION concerning the subject matter hereof.
- (16) 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.
- (17) 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.
- (18) 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.
- (19) 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.
- (20) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires CARB to provide information on the basis for the penalties it seeks (HSC § 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 §§ 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 failure to meet the requirements of the Engine Model Year Compliance Schedule for heavier vehicles is \$6,000 or \$3,000 per truck per violation:

- \$3,000 for one vehicle with a 1996-1999 model year engine
- \$3,000 for one vehicle with a 2000-2004 model year engine

The penalty obtained for the Truck and Bus violations involved in this case for failure to meet the requirements of the Engine Model Year Compliance Schedule for lighter vehicles is \$9,000 or \$3,000 per truck per violation:

- \$6,000 for two vehicles with a 1995 or older model year engine, and
- \$3,000 for one vehicle with a 1996 model year engine.

The penalty obtained for the Truck and Bus violations involved in this case, for failure to report all required information for all vehicles in the fleet was reduced by 100% as this was a minor violation with no emissions impacts and the violation has been corrected.

The penalty for failing to meet the requirements of the Engine Model Year Compliance schedule was discounted because this was a first time violation and the violator made 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.**

Truck and Bus Violations

The penalty provision being applied for the Truck and Bus regulation (13 CCR § 2025) violations in this case is HSC § 39674 because the Truck and Bus regulation is an Airborne Toxic Control Measure adopted pursuant to

authority contained in HSC §§ 39002 et seq., 39650-39675 and because A RUIZ CONSTRUCTION failed to bring their diesel fleet into compliance by the deadlines set forth in 13 CCR § 2025(g) and 2025(f)).

**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 noncompliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (21) A RUIZ CONSTRUCTION acknowledges that CARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, CARB has considered all relevant facts, including those listed at HSC § 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.
- (22) 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 basis.
- (23) The penalty was based on confidential settlement communications between CARB and A RUIZ CONSTRUCTION that CARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between CARB and A RUIZ CONSTRUCTION and reflects CARB's assessment of the relative strength of its case against A RUIZ CONSTRUCTION, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that A RUIZ CONSTRUCTION may have secured from its actions.
- (24) Now therefore, in consideration of the payment on behalf of A RUIZ CONSTRUCTION to the Air Pollution Control Fund, CARB hereby releases A RUIZ CONSTRUCTION and their principals, officers, agents, predecessors and successors from any and all claims, CARB may have or have in the future based on the circumstances described in paragraphs (1) through (12) of the Recitals.



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The undersigned represent that they have the authority to enter into this Agreement.

**California Air Resources Board**

Signature: 

Print Name: Dr. Todd P. Sax

Title: Chief, Enforcement Division

Date: 10/24/18

**A Ruiz Construction Company and Associates, Inc.**

Signature: 

Print Name: Antonio Ruiz

Title: President

Date: 10/10/2018