

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by the California Air Resources Board (ARB) principally located at 1001 I Street, Sacramento, California 95814, and City of Calexico, principally located at 608 Heber Avenue, Calexico, California 92231.

### RECITALS

1. California Health and Safety Code (H&SC) section 39658(b)(1) establishes the Asbestos National Emissions Standard for Hazardous Air Pollutants (title 40, Code of Federal Regulations (CFR) section 61.140, et seq.) as an Airborne Toxic Control Measure (Asbestos ATCM) enforceable by ARB.
2. The Asbestos ATCM defines an owner or operator of a demolition or renovation activity as any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both. (40 CFR § 61.141)
3. The Asbestos ATCM requires owners or operators of a demolition or renovation activity and prior to the commencement of the demolition or the renovation, to thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II non-friable asbestos containing materials. (40 CFR § 61.145(a))
4. The Asbestos ATCM requires owner(s) or operator(s) of demolition or renovation activities to provide written notification of the intention to demolish or renovate a regulated facility ten (10) working days before work begins. (40 CFR § 61.145(b))
5. On or about March 17, 2015, the City of Calexico demolished a structure identified as the "Maintenance Building" located at 608 Heber Avenue, Calexico, California 92231. The maintenance building is a regulated structure under the Asbestos ATCM.
6. City of Calexico is an owner or operator of a demolition or renovation activity under the Asbestos ATCM, with respect to the demolition activities at the maintenance building.
7. City of Calexico admits to the facts identified in Recitals 1 through 6, above.
8. ARB alleges that City of Calexico failed to thoroughly inspect suspect asbestos containing materials at the maintenance building prior to commencement of demolition.

9. ARB alleges that City of Calexico failed to notify ARB or U.S. Environmental Protection Agency 10 working days prior to commencing the regulated demolition activity.
10. A violation of the Asbestos ATCM is a violation of State Law resulting in penalties. State law authorizes strict liability penalties not to exceed \$10,000.00 per day, for each day that the violation occurs. (H&SC §42402)
11. ARB and City of Calexico desire to resolve this matter completely under the terms of this Agreement, in lieu of litigation. In order to resolve these violations, City of Calexico agrees to take the actions enumerated below within the Terms and Release.

#### **TERMS AND RELEASE**

12. In consideration of ARB not filing a legal action against City of Calexico for the alleged violations referred to above, ARB and City of Calexico agree as follows:  
  
Upon execution of this Agreement City of Calexico agree to pay civil penalties in the total amount of TEN THOUSAND dollars (\$10,000.00). Payment shall be made in accordance with the instructions in Attachments A to this Agreement.
13. City of Calexico shall not violate the Asbestos ATCM.
14. City of Calexico agrees that the Effective Date of this Agreement shall be the date upon which City of Calexico executes this Agreement.
15. The City of Calexico agrees to establish and implement procedures necessary to comply with California Health and Safety Code section 19827.5. The City of Calexico agrees to extend such procedures to include renovation projects subject to the Asbestos ATCM. The City of Calexico further agrees to post such procedures on the City's building department webpage. The City of Calexico further agrees to provide a copy of this procedure to renovation and demolition project applicants. To demonstrate compliance with this condition, the City of Calexico shall, within one year of the effective date of this Agreement, provide to ARB a copy of such procedures and shall post such procedures on the City of Calexico's website in a location.
16. City of Calexico agrees to provide to at least one employee, training that meets the Asbestos Hazard Emergency Response Act requirements for Asbestos Contractor/Supervisor Initial (40-hour) training. To demonstrate compliance with this provision, City of Calexico shall provide to ARB proof of completion, in the form of a copy of the awarded training certificate documenting the date of attainment

within one year of the Effective Date of this Agreement.

17. Submittals necessary to demonstrate compliance shall be mailed to:

Mr. Ahmad Najjar  
Enforcement Division  
Air Resources Board  
P.O. Box 2815  
Sacramento, California 95812

If the City of Calexico makes the required submittals, as described in paragraphs 15 and 16, the outstanding penalties shall be suspended. If the City of Calexico fails to meet the required submittals, as described in paragraphs 15 and 16, the suspended penalty becomes due and payable immediately without further notice or action.

18. This Agreement shall apply to and be binding upon City of Calexico along with their any successor agency, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
19. This Agreement constitutes the entire agreement and understanding between ARB and City of Calexico concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and City of Calexico concerning the subject matter.
20. Failure to comply with any of the terms of this Agreement shall void the agreement and ARB may take enforcement action based on the initial violation and any subsequent violations of this Agreement. Any failure to comply with this Agreement will be determined individually, such that a failure by one party does not otherwise impact compliance by the remaining parties.
21. 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 is to remain in full force and effect.
22. 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.

**23. SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, Statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (H&SC section 39619.7). This information is provided throughout this Agreement and is summarized here:

**The manner in which the penalty amount was determined, including 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 section 42403.

The per unit penalty in this case is a maximum of ten thousand dollars (\$10,000) per violation per day for strict liability violations pursuant to Health and Safety Code section 39674. After considering all factors specified in Health and Safety Code section 42403, the penalty obtained in this case is a total of TEN THOUSAND DOLLARS (\$10,000). This reflects a penalty of \$500 for each of 10 working days that a notification was not submitted in advance of demolition and \$5,000 for a single day of failure to thoroughly inspect the facility for the presence of asbestos containing materials. Asbestos is a toxic air contaminant and violations of the Asbestos ATCM, including violations of this nature, could result in immediate and localized exposure. The notification requirement allows ARB to inspect the project for regulated asbestos containing materials (RACM) not identified or disclosed in the pre-project asbestos inspection and not properly abated prior to demolition. The penalty reflects that ARB has not previously issued Asbestos ATCM notices of violation to City of Calexico.

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

The penalty provision is being applied in this case is Health and Safety Code section 39674, because City of Calexico failed to comply with the Asbestos ATCM established under Health and Safety Code section 39658(b).

**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 practical to do so.**

The notification and inspection requirements do not reflect an emission limit.

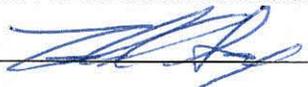
**24. City of Calexico acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at H&SC § 42403, has explained the manner in which the penalty**

amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specific level.

25. 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 cost and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.
26. The penalty reflects ARB's assessment of the relative strength of its case against City of Calexico, and the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage that City of Calexico may have secured from their actions.
27. Now therefore, in consideration of the suspended payment on behalf of City of Calexico ARB hereby resolves with City of Calexico and their successor agency, and successors from any and all claims for the past violations of the Asbestos ATCM ARB may have based on the circumstances described in the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

**SIGNATURES**

**California Air Resources Board**

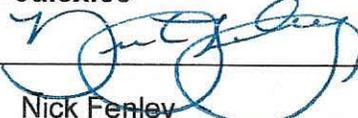
By: 

Name: Todd Sax

Title: Division Chief

Date: 10/14/16

**City of Calexico**

By: 

Name: Nick Fenley

Title: Acting City Manager

Date: JUNE 14, 2016