

## 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 Merced Union High School District (hereinafter "MUHSD"), 2430 A Street, Atwater, California 95301.

### I. RECITALS

- (1) California Health and Safety Code section 44011.6 (HSC § 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 HDVIP, chapter 3.5, California Code of Regulations, title 13, sections 2180-2188 (13 CCR §§ 2180-2188).
- (2) HSC § 43701 provides that ARB shall adopt regulations that require owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excessive smoke emissions.
- (3) 13 CCR § 2190 *et seq.* were adopted under the authority of HSC § 43701 and, with limited exceptions, which are not applicable here, apply to all heavy-duty diesel powered vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California.
- (4) 13 CCR § 2190 *et seq.* authorize the Periodic Smoke Inspection Program (PSIP) which requires the owners and operators of California based vehicle fleets of two or more heavy-duty diesel motor vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California to conduct annual smoke opacity inspections of their vehicles equipped with engines that are four years old or older.
- (5) 13 CCR § 2192(a) requires inter alia that the owner of the vehicle "[t]est the vehicle for excessive smoke emissions periodically according to the inspection intervals specified in section 2193(a), (b), and (c)", "[m]easure the smoke emissions for each test...", "[r]ecord the smoke test opacity levels and other required test information as specified in section 2194..." and "[k]eep the records specified in section 2194 for two years after the date of inspection."
- (6) HSC § 43016 states, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which there is not provided in this part any other specific civil penalty or fine, shall

## SETTLEMENT AGREEMENT AND RELEASE

ARB and MUHSD

Page 2 of 10

be subject to a civil penalty of not to exceed five hundred dollars (\$500.00) per vehicle."

- (7) ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.
- (8) ARB contends MUHSD failed to test, measure, record, and maintain records of smoke emissions for its fleet of heavy-duty diesel vehicles for year 2014 in violation of 13 CCR § 2190 *et seq.*
- (9) 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, ARB 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.
- (10) 13 CCR § 2025(e)(2) states: "Beginning January 1, 2012, fleets with school buses must comply with the requirements of 13 CCR § 2025(k) for all school buses in the fleet."
- (11) 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.
- (12) MUHSD has a fleet containing school buses.
- (13) 13 CCR § 2025(k) requires that owners of school buses with a gross vehicle weight rating greater than 14,000 pounds meet the PM Best Available Control Technology (BACT) requirements by phasing in 66 percent by January 1, 2013 and 100 percent by January 1, 2014.
- (14) ARB has documented that MUHSD failed to have 66 percent of its school bus fleet compliant by January 1, 2013 and 100 percent compliant by January 1, 2014.
- (15) In order to resolve these alleged violations, MUHSD agrees to take the actions enumerated below under "RELEASE". Further, ARB accepts completion of the enumerated actions below in this Agreement in termination and settlement of this matter.

- (16) 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, ARB and MUHSD agree as follows:

**II. TERMS AND RELEASE**

- (1) *Penalty Assessment.* The penalty amount for these violations is assessed at \$18,750 (Assessed penalty).
- (2) *MUHSD Mitigation Plan.* MUHSD shall, at its own expense, do the following:
- a. Purchase at least five replacement buses with 2010 model year or newer diesel engines, and remove all two-stroke diesel buses from the MUHSD fleet.
  - b. Provide ARB written proof of the purchased buses, within 60 days of the execution of this settlement agreement. Written proof shall contain the total purchase cost and Vehicle Identification Number (VIN), for each bus.
  - c. For each of the following units:

Unit Number	License Plate	VIN
B003	481718	1C9AH14A5FL102146
B004	480996	1C9AH14A7FL102147
B005	080291	1C9BH14A9HC102122
B006	066437	1C9BH14A0HC102123
B007	208308	1C9BH12A5JC102319
B008	208307	1C9BH12A1JC102320
B009	208306	1C9BH12A3JC102321
B010	208309	1C9BH12A5JC102322
B011	334600	1C9BH12A3LC102399
B012	339501	1C9BH12A6LC102400

MUHSD shall do the following:

- 1. By January 1, 2018, remove from service and cease operation.
- 2. Provide mileage readings from a working odometer or hubodometer, recorded on January 1, 2018.
- 3. Provide mileage readings from a working odometer or hubodometer, recorded on June 30, 2018.
- 4. Provide copies of Affidavits of Non-Use filed with DMV by January 1, 2018.

5. Provide written documentation showing how the unit was removed from the fleet, including, but not limited to, proof of sale out of state or destruction of the vehicle, within 14 days of a units removal from the fleet. The intent of this agreement is to have buses removed from the fleet, and also removed from California or scrapped.
6. Remove from the fleet by June 30, 2018.
7. MUHSD will provide complete information for the auction house used by MUHSD to sell the buses identified above in Section II, *Terms and Release*, paragraph (2) *MUHSD Mitigation Plan*, subparagraph (c). Complete information includes the full name, address, telephone number, e-mail address, and point of contact for the auction house.
8. MUHSD will provide the completed release of liability form submitted to the California Department of Motor vehicles for all 10 buses sold.
9. Within 15 days after this settlement agreement is fully executed, MUHSD will pay to the Air Pollution Control Fund, a penalty of \$3,750 dollars (mitigation penalty) identified below in Section II, *Terms and Release*, paragraph (3).

(3) Payment shall be made as described below, by March 6, 2018

<b>Payment Due Date:</b>	<b>In the Amount of and Payable to:</b>	
March 6, 2018	\$3,750.00	the Air Pollution Control Fund

Please submit 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

(4) *ARB Offset Agreement.* ARB agrees to accept MUHSD completion of the MUHSD Mitigation Plan identified above in Section II, *Terms and Release*, paragraph (2) *MUHSD Mitigation Plan*, in lieu of payment of the assessed penalty identified above Section II, *Terms and Release*, paragraph (1) *Penalty Assessment*. Failure on the part of MUHSD to meet any condition in the MUHSD Mitigation Plan will result in the entire assessed penalty being immediately due and payable by MUHSD to ARB's Air Pollution Control Fund within 15 days of MUHSD failure to meet any condition of the MUHSD Mitigation plan. Payment instructions are located above in Section II, *Terms and Release*, paragraph (3).

If MUHSD completes all requirements of MUHSD Mitigation Plan, including the payment of the \$3,750 mitigation penalty, ARB will consider the assessed penalty of \$18,750 dollars paid in full and this matter will be fully resolved between ARB and MUHSD.

**Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:**

**Julian Ortiz  
Air Pollution Specialist  
California Air Resources Board  
Enforcement Division  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731**

**The due date to sign and return for this Settlement Agreement is March 6, 2018**

- (5) MUHSD shall not violate the laws and regulations enforced by ARB including, HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2025, 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (6) MUHSD shall, at its own expense, send MUHSD personnel identified in subparagraphs (a) and/or (b) below 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 ARB webpage at <http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm>. This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP, the ECL regulation and the HDVIP.
  - (a) MUHSD 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 ARB 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.
  - (b) If MUHSD 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, MUHSD 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 ARB with PSIP records as required by this Agreement and be maintained with the annual PSIP records.

SETTLEMENT AGREEMENT AND RELEASE

ARB and MUHSD

Page 6 of 10

- (7) MUHSD shall at its own expense, send MUHSD personnel identified in subparagraphs (a) and/or (b) below to attend the CCDET II class (Diesel Exhaust After Treatment and Maintenance), described on the ARB's webpage <http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm>. 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) MUHSD 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 ARB 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 MUHSD uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, MUHSD 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 MUHSD to ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.
- (c) In case MUHSD 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, MUHSD 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 MUHSD to ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.
- (8) MUHSD shall submit copies of all PSIP compliance records for the years 2018 and 2019 to ARB by January 31 of the following year. **Copies shall be addressed to the attention of Julian Ortiz at the California Air Resources Board, Enforcement Division, 9480 Telstar Avenue, Suite 4, El Monte, California 91731.** ARB reserves the right to visit any MUHSD fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.
- (9) MUHSD shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to ARB within 45 days of this agreement.
- (10) MUHSD shall remain in compliance with the Emission Control Label (ECL) regulation as codified in 13 CCR § 2183.

## SETTLEMENT AGREEMENT AND RELEASE

ARB and MUHSD

Page 7 of 10

- (11) MUHSD 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) MUHSD shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025.
- (13) This Agreement shall apply to and be binding upon MUHSD, 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.
- (14) This Agreement constitutes the entire agreement and understanding between ARB and MUHSD concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and MUHSD concerning the subject matter hereof.
- (15) 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.
- (16) 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.
- (17) 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.
- (18) 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.
- (19) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires ARB 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.

PSIP Violations

The per vehicle penalty for the PSIP violations involved in this case is a maximum of \$500.00 per vehicle per violation per year. The penalty obtained for the PSIP violations involved in this case is \$750.00 for two violations involving two vehicles, or \$375.00 per vehicle per violation.

The penalty was discounted due to financial hardship and based on the fact that this was a first time violation and the violator made diligent efforts to comply and to cooperate with the investigation.

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 school bus compliance schedule is \$18,000.00 or \$250.00 per vehicle per violation, or:

- \$9,000.00 for 3 vehicles not meeting the 66 percent phase-in requirement by January 1, 2013 (12 months in violation)
- \$9,000.00 for 12 vehicles not meeting the 100 percent phase-in requirement by January 1, 2014 (3 months in violation)

The penalty was discounted due to financial hardship and based on the fact that 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.**

PSIP Violations

The penalty provision being applied to the PSIP violations is HSC § 43016 because MUHSD failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for the years 2014 in violation of the PSIP regulation in 13 CCR § 2190 *et seq.*, for two vehicles. Since the PSIP regulation was adopted pursuant to authority granted in Part 5 of Division 26 of the HSC and since there is no specific penalty or fine provided for PSIP violations in Part 5, HSC § 43016 is the applicable penalty provision.

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 MUHSD failed to bring their diesel fleet into compliance by the deadlines set forth in 13 CCR § 2025(k).

**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.**

PSIP Violations

The PSIP provisions cited above do prohibit emissions above a specified opacity or level of g/hp-hr. However, since the hours of operation of the noncompliant units involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

Truck and Bus

The provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the noncompliant buses involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (20) MUHSD acknowledges that ARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, ARB 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.
- (21) 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.

SETTLEMENT AGREEMENT AND RELEASE

ARB and MUHSD

Page 10 of 10

- (22) The penalty is the product of an arm's length negotiation between ARB and MUHSD and reflects ARB's assessment of the relative strength of its case against MUHSD, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that MUHSD may have secured from its actions.
- (23) The undersigned represent that they have the authority to enter into this Agreement.
- (24) This agreement and any modifications thereto, may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument. Faxed or emailed signatures shall constitute original signatures binding on the signing party.

**California Air Resources Board**

Signature:



Print Name: Dr. Todd P. Sax

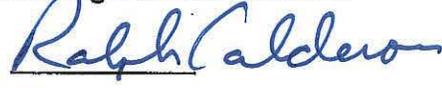
Title: Chief, Enforcement Division

Date:

3/1/18

**Merced Union High School District**

Signature:



Print Name: Ralph Calderon

Title:

Deputy Superintendent

Date:

2-15-18