

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 ROADRUNNER TRANSPORTATION SYSTEMS, INC. (hereinafter "ROADRUNNER TRANSPORTATION"), 4900 S Pennsylvania Avenue, Cudahy, Wisconsin 53110.

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(x)(2) provides that "Any in-state or out-of-state motor carrier, California broker, or any California resident, who operates or directs the operation of any vehicle subject to this regulation shall verify that each hired or dispatched vehicle is in compliance with the regulation and comply with the record keeping requirements of section 2025(s)(4)."
- (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 (\$1,000.00) or ten thousand dollars (\$10,000.00), respectively, for each day in which the violation occurs.
- (4) CARB Enforcement Division has documented that ROADRUNNER TRANSPORTATION failed to verify that each hired or dispatched vehicle was in compliance with the Truck and Bus regulation and to comply with the record keeping requirements. In addition, ROADRUNNER TRANSPORTATION hired fleets that were determined to be out of compliance with the Truck and Bus regulation.
- (5) In order to resolve these alleged violations, ROADRUNNER TRANSPORTATION has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, CARB accepts this Agreement in termination and settlement of this matter.
- (6) 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 ROADRUNNER TRANSPORTATION agree as follows:

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II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against ROADRUNNER TRANSPORTATION for the alleged violations referred to above, and ROADRUNNER TRANSPORTATION'S payment of the penalties set forth in Section 1 below, CARB and ROADRUNNER TRANSPORTATION agree as follows:

- (1) Upon execution of this Agreement, ROADRUNNER TRANSPORTATION shall pay a civil penalty of \$52,250.00. Payment shall be made as follows by **December 1, 2017**.
- \$25,000.00 payable to the **California Safe Schools**
 - \$27,250.00 payable to the **Air Pollution Control Fund**

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

**Mr. Ryman Simangan
Air Pollution Specialist
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, California 95812**

For payments made to the California Safe Schools please send payment by December 1, 2017 along with the corresponding Attachment A1 – "Settlement Agreement Payment Transmittal Form" shall be submitted to:

**California Safe Schools
For: GROUND TRUTHING SEP
1000 North Alameda, Suite 240
Los Angeles, CA 90012**

In addition, a copy of each payment check made to California Safe Schools shall be mailed to:

**Mr. Ryman Simangan
Air Pollution Specialist
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, California 95812**

For payments made to the Air Pollution Control Fund, please send the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A2) to:

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

- (2) ROADRUNNER TRANSPORTATION has agreed to undertake a SEP as described in Attachment B – "SUPPLEMENTAL ENVIRONMENTAL PROJECT AGREEMENT – GROUND TRUTHING SEP", ("SEP Agreement"), to offset a portion of the penalty, consistent with CARB's SEP Policy. Pursuant to this Agreement, ROADRUNNER TRANSPORTATION shall make payments according to the schedule above in (1).
- (3) ROADRUNNER TRANSPORTATION has agreed that by funding the GROUND TRUTHING SEP, they will not receive any direct or indirect financial benefit, and that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action.
- (4) Upon agreeing to the terms set forth in the SEP Agreement, and funding the GROUND TRUTHING SEP, ROADRUNNER TRANSPORTATION is released of all liabilities as they relate to the GROUND TRUTHING SEP as reflected in this underlying Settlement Agreement.
- (5) In the event the SEP is not fully implemented in accordance with the terms of the SEP Agreement, CARB (as the third party beneficiary) shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount waived based on the timely and successful completion of any previously agreed upon interim milestone(s), to be deposited into Air Pollution Control Fund. Accordingly, ROADRUNNER TRANSPORTATION shall assign any and all rights against the SEP implementer to CARB.
- (6) If the Attorney General files a civil action to enforce this settlement agreement, ROADRUNNER TRANSPORTATION shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.
- (7) It is further agreed that the penalties described in "Terms and Release", paragraph 1 are punitive in nature, rather than compensatory. Furthermore, the

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penalty is intended to deter and punish ROADRUNNER TRANSPORTATION 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 ROADRUNNER TRANSPORTATION by CARB arising from the facts described in recital paragraphs (1) through (5) 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.

- (8) ROADRUNNER TRANSPORTATION shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (9) ROADRUNNER TRANSPORTATION shall remain in compliance with the ECL regulation as codified in 13 CCR § 2183.
- (10) ROADRUNNER TRANSPORTATION 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.
- (11) ROADRUNNER TRANSPORTATION shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025.
- (12) This Agreement shall apply to and be binding upon ROADRUNNER TRANSPORTATION, 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.
- (13) This Agreement constitutes the entire agreement and understanding between CARB and ROADRUNNER TRANSPORTATION concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between CARB and ROADRUNNER TRANSPORTATION concerning the subject matter hereof.
- (14) 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.
- (15) 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.

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- (16) 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.
- (17) 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.
- (18) 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 \$1,000.00 per vehicle per day for strict liability violations or \$10,000.00 per vehicle per day for negligent or intentional violations.

The penalty obtained for the Truck and Bus violation involved in this case for failure to verify that each hired or dispatched vehicle was in compliance with the Truck and Bus regulation is \$2,250.00 for 9 hired fleets determined to be in compliance with the Truck and Bus regulation, or \$250.00 per hired fleet, and \$50,000.00 for 100 hired fleets determined to be out of compliance with the Truck and Bus regulation, or \$500.00 per hired fleet.

The penalty was discounted based on the fact that this was a first time violation and the violator made diligent efforts to comply with the broker verification requirement in 13 CCR § 2025 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 ROADRUNNER

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TRANSPORTATION failed to verify that each hired or dispatched vehicle was in compliance with the Truck and Bus regulation. Also, ROADRUNNER TRANSPORTATION hired fleets determined to be out of compliance with the Truck and Bus regulation.

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.


- (19) ROADRUNNER TRANSPORTATION 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.
- (20) 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.
- (21) The penalty was based on confidential settlement communications between CARB and ROADRUNNER TRANSPORTATION that CARB does not retain in the ordinary course of business. The penalty is the product of an arm's length negotiation between CARB and ROADRUNNER TRANSPORTATION and reflects CARB's assessment of the relative strength of its case against ROADRUNNER TRANSPORTATION, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that ROADRUNNER TRANSPORTATION may have secured from its actions.
- (22) Now therefore, in consideration of the payment on behalf of ROADRUNNER TRANSPORTATION to the Air Pollution Control Fund and the California Safe Schools, CARB hereby releases ROADRUNNER TRANSPORTATION and their

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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 (5) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

CALIFORNIA AIR RESOURCES BOARD

**ROADRUNNER TRANSPORTATION
SYSTEMS, INC.**

Signature: 

Signature: 

Print Name: Ellen M. Peter

Print Name: Clay Mercedes

Title: Chief Counsel

Title: V.P. of Safety

Date: 12/19/2017

Date: 12/19/17