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 AMERICAN INDUSTRIAL SERVICES (hereinafter "AIS"), 5626 Cherry Ave., Long Beach, CA 90801

I. RECITALS

(1) California Health and Safety Code (HSC) section 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 Heavy-Duty Smoke Inspection Program, chapter 3.5, sections 2180-2188, title 13 California Code of Regulations (CCR).

(2) HSC section 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) Title 13 CCR, section 2190 *et seq.* was adopted under the authority of HSC section 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) Title 13 CCR, section 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 that are four years older than the model year of the vehicle's engine.

(5) Under authority of HSC, section 39601 and 39660, title 13 CCR, Sections 2020 *et seq.* requires owners of diesel fueled solid waste collection vehicles over 14,000 pounds gross vehicle weight with model-year engines from 1960 to 2006 used to collect solid waste to use best available control technology for each solid waste collection vehicle in the active fleet. Records of the installed diesel emission control strategies and corresponding compliance plan must be accessible at the terminal. Each solid waste collection vehicle must have a legible and durable label with complete and accurate information affixed to the driver's side doorjamb or another readily accessible location known to the driver.

(6) The ARB Enforcement Division contends that AIS failed to install best available control technology to solid waste collection vehicles in its fleet according to the implementation schedule outlined in title 13 CCR, Sections 2021 et seq. at their terminal in Long Beach, California.

(7) HSC sections 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 not to exceed ten thousand dollars ($10,000.00) respectively, for each day in which the violation occurs.

(8) In order to resolve these alleged violations, AIS has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, the ARB accepts this Agreement in termination and settlement of this matter.

(9) 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, the ARB and AIS agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, AIS shall pay a civil penalty of **five thousand dollars ($5,000)**. Payment shall be made in check form as described below, and payments shall be made in two payment installments beginning on **January 13, 2014**.

	Payment Due Date:	In the Amount of and Paid to:	
1	January 13, 2014	**$1,250.00**	paid to **Peralta Colleges Foundation**
2	January 13, 2014	**$1,250.00**	paid to **Air Pollution Control Fund**
3	March 17, 2014	**$2,500.00**	paid to **Air Pollution Control Fund**

Please submit the signed settlement agreement and checks to:

Ms. Allison Spreadborough, Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

(2) 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, AIS shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(3) It is agreed that if AIS, 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 AIS, 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 AIS, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of AIS's, its subsidiary, or parent company's properties, or if any deposit account or other property of AIS, 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 AIS, 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.

(4) 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 AIS for violations of state environmental statutes, and these penalties are payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that these penalties imposed on AIS by ARB arising from the facts described in recital paragraphs (1) through (9) 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.

(5) AIS shall not violate HSC sections 43701 *et seq.*, 44011.6 *et seq.*, and title 13 CCR, sections 2183, 2190 *et seq*, and 2485 *et seq*.

(6) AIS shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to the ARB within 45 days of this agreement.

(7) Each 1974 or newer diesel powered heavy-duty vehicle in AIS 's fleet shall comply with the ECL regulation as codified in title 13 CCR, section 2183.

(8) Each solid waste collection vehicle shall comply with the label requirements set forth in the title 13 CCR, Section 2021.2(f) (2) within 45 days of this agreement.

(9) AIS shall retrofit solid waste collection vehicles with best available technology within 45 days of this Agreement. AIS will keep records of installed diesel control strategies and update the solid waste collection vehicle compliance plan accordingly.

(10) AIS shall submit an updated compliance plan demonstrating compliance with the Solid Waste Collection Vehicle Rule to Ms. Allison Spreadborough, Inspector, Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812 or electronically at aspreadb@arb.ca.gov within 45 days of this Agreement.

(11) AIS shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in title 13 CCR section 2485, within 45 days of this Agreement.

(12) AIS shall not violate the Truck & Bus regulation as codified in title 13 CCR, section 2025 et seq.

(13) This Agreement shall apply to and be binding upon AIS, 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 AIS concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and AIS 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 the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 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 sections 42403 and 43024.

Solid Waste Collection Vehicle Rule Violations

The per vehicle penalty for the Solid Waste Collection Vehicle Rule 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 failing to install best available control technology by the implementation deadline in this case is $5,000 or $500 per vehicle per violation.

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

Solid Waste Collection Vehicle Rule Violations

The penalty provision being applied for the Solid Waste Collection Vehicle Rule (title 13 CCR, section 2020 *et seq.*) violations is HSC section 39674. The SWCV rule is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC Section 39660, *et seq.* and because AIS failed to install best available control technology on four vehicles by the implementation deadlines as required by the Solid Waste Collection Vehicle Rule during the years 2009 through 2012 over an unspecified number of days.

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.

Solid Waste Collection Vehicle Rule Violations

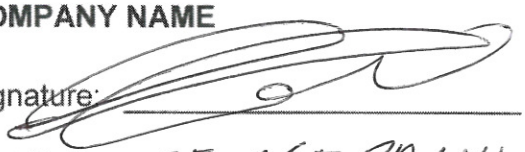
The provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the non-compliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

(20) AIS 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 section 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.

(22) The penalty was based on confidential settlement communications between ARB and AIS that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and AIS and reflects ARB's assessment of the relative strength of its case against AIS, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that AIS may have secured from its actions.

(23) Now therefore, in consideration of the payment on behalf of AIS to the Air Pollution control Fund and the Peralta Colleges Foundation, the ARB hereby releases AIS and their principals, officers, agents, predecessors and successors from any and all claims, the ARB may have or have in the future based on the circumstances described in paragraph (1) through (9) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement

California Air Resources Board		**COMPANY NAME**	
Signature:		Signature:	
Print Name:	James Ryden	Print Name:	GEORGE ADAMIAN
Title:	Chief, Enforcement Division	Title:	OWNER
Date:	1/13/14	Date:	1/7/14