

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 **AMADOR TRANSIT (AT)** 11400 American Legion Drive, Jackson, California 95642.

I. RECITALS

- (1) The Fleet Rule for Transit Agencies—Transit Fleet Vehicle Requirements, sections 2020 and 2023.2(b)(2) of Title 13 of the CCR, state that, no later than January 1, 2010, the PM emission total for a transit agency on a diesel path shall be no more than 20 percent of its diesel PM emission total as of January 1, 2005 or equal to 0.01 g/bhp-hr times the total number of current diesel-fueled active transit fleet vehicles, whichever is greater.
- (2) ARB contends that AT failed to report to the ARB the AT diesel PM emission total in January 1, 2011 and January 1, 2012 which is a violation of section 2023.2(b)(2).
- (3) The ARB has documented that AT failed to meet the 80 percent PM reduction by December 31, 2010 as required under 2023.2(b)(2).
- (4) AT provides urban and transit services to AT residents who would otherwise drive in single-occupant vehicles. The public transit vehicles are generally less polluting than multiple single-occupant vehicles and reduce traffic congestion and the consumption and combustion of fuels.
- (5) Failure to comply with programs for the regulation of toxic air contaminants is a violation of state law resulting in penalties. HSC section 39674 authorizes civil or administrative penalties not to exceed one thousand dollars (\$1,000) or ten thousand dollars (\$10,000) for each day that the violation occurs.
- (6) In order to resolve these alleged violations, AT has taken, or agreed to take, the actions enumerated below under "TERMS AND RELEASE". Further, the ARB accepts this Agreement in termination and settlement of this matter.
- (7) 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 AT agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, the sum of ten thousand dollars (\$10,000.00) shall be paid on behalf of AT and submitted no later than May 7, 2013, as follows:

- \$7,500.00 to the **California Air Pollution Control Fund**
- \$2,500.00 to the **Peralta College Foundation**

Please submit the signed settlement agreement and checks to:

Ms. Ann M. Stacy, Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

- (2) AT shall not violate HSC sections 42701 *et seq.* and 44011.6 *et seq.*, Title 13 CCR, sections 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (3) AT 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 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 and ECL.
- (a) AT 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 AT 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, AT 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.

- (4) AT shall comply with one or both of the following options to attend the CCDET II class (Diesel Exhaust After Treatment System (DEAT) 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 DEAT.
- (a) AT shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of DEAT, 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 AT uses a contractor for the maintenance of DEAT, in addition to having the fleet maintenance manager, or equivalent, attend the CCDET II course, AT shall obtain proof that the contractor's staff maintaining the DEAT device(s) completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by AT to the ARB within six months of the date of this settlement and be maintained with the DEAT installation and maintenance records.
- (5) AT shall submit copies of all PSIP compliance records for years 2013 and 2014 to the ARB by January 31 of the following year. Copies shall be addressed to the attention of Ms. Ann Stacy at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812. The ARB reserves the right to visit any AT fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.
- (6) AT 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 the AT fleet shall comply with the emission control label (ECL) requirements set forth in the CCR, title 13, section 2183(c) within 45 days of this agreement.
- (8) AT shall maintain compliance with the Transit Fleet Vehicle emissions of 80 percent reduction from the 2005 baseline as specified in 13 CCR, section 2023.2(b)(2).
- (9) AT shall purchase and/or lease new urban bus(s), as defined in 13 CCR section 2023 (a)(13), for the transit agency heavy duty diesel vehicles must be equipped with a California certified Urban Bus engine that does

not exceed a 0.01 g/bhp-hr PM and a 0.2 g/bhp-hr NOx emission standard.

- (10) AT shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in CCR, Title 13, Section 2485, within 45 days of this Agreement.
- (11) This Agreement shall apply to and be binding upon AT, and its 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.
- (12) This Agreement constitutes the entire agreement and understanding between ARB and AT concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and AT concerning the subject matter hereof.
- (13) 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.
- (14) 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.
- (15) 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.
- (16) 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.
- (17) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see HSC, 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 (*H&SC*) sections 42403 and 43024.

Fleet Rule for Transit Agencies Violations

The per vehicle penalty for the Transit Fleet Vehicle (TFV) 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 TFV violations involved in this case is \$10,000.00 for 5 vehicles for the 2011 and 2012 reporting years, or \$1,000.00 per vehicle per violation.

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

Fleet Rule for Transit Agencies Violations

The penalty provision being applied for the Fleet Rule for Transit Agencies violations is HSC section 39674, because the rule is an ATCM adopted pursuant to authority contained in HSC section 39660, et seq. and because AT failed to reduce the Transit Fleet Vehicle 2005 PM baseline by emissions by 80 percent as required by the Rule for Transit Fleet Agencies, Title 13, CCR, section 2023 et seq., over an unspecified number of days during the years of 2011 and 2012 and to report.

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.

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.

- (18) AT acknowledges that ARB has complied with SB 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.
- (19) 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.

- (20) The penalty was based on confidential settlement communications between ARB and AT that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and AT and reflects ARB's assessment of the relative strength of its case against AT, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that AT may have secured from its actions.
- (21) Now therefore, in consideration of the payment on behalf of AT to the California Air Pollution Control Fund and the Peralta Community College District, the ARB hereby releases AT and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations from any and all claims, the ARB may have or have in the future based on the circumstances described in paragraph (1) through (6) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

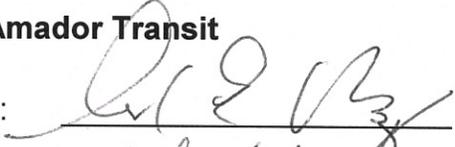
California Air Resources Board

By: 
Name: Jim Ryden

Title: Chief, Enforcement Division

Date: June 6, 2013

Amador Transit

By: 
Name: Michael E. Vasquez

Title: Chairman

Date: 27 MAY 2013