

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 CALIFORNIA CLEAN AIR TECHNOLOGIES LLC (hereinafter "CCAT"), 31936 Theresa Court, Menifee, California 92584.

I. RECITALS

- (1) California Vehicle Code (VC) section 38391 provides that no person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required off-highway motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system. An exemption from Vehicle Code section 38391 is required before any add-on or modified part can be sold in California. Aftermarket parts exemptions are regulated under CCR, Title 13, Sections 1900 et seq., 2030-2031, 2047-2048, 2200-2207 and 2220-2225 (Aftermarket Parts Regulations).
- (2) If a Diesel Emission Control Strategy (DECS) or the application it is used in does not meet the conditions specified in the Verification Procedure or the applicable Executive Order (EO), it is a violation of the Verification Procedure, and the DECS is not verified for that application, rendering it an illegal, non-exempt add-on part.
- (3) The ARB Enforcement Division staff, with the cooperation of CCAT, has documented alleged violations of the California Vehicle Code (VC) section 38391 in California.
- (4) Health and Safety Code sections 39674 (a) and (b) authorize civil payments 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.
- (5) In order to resolve these alleged violations, CCAT 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.
- (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 alleged violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, the ARB and CCAT agree as follows:

II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against CCAT for the alleged violations referred to above, the ARB and CCAT agree as follows:

(1) Upon execution of this Agreement, the sum of four thousand eight hundred seventy-five dollars and zero cents (\$4,875.00) shall be paid on behalf of CCAT, as follows:

- \$3,656.25 to the **California Air Pollution Control Fund**.
- \$1,218.75 to the **Peralta Colleges Foundation**.

ARB to receive by:

Upon execution of Settlement	First Payment
7/31/2013	Second Payment
10/31/2013	Third Payment
1/31/2014	Fourth Payment
4/30/2014	Fifth Payment
7/31/2014	Sixth Payment
10/31/2014	Seventh Payment
1/31/2015	Eighth Payment

- First payment is due upon execution of Settlement and shall be made in form of a check payable to the **Peralta Colleges Foundation** in the amount of \$609.37. - ck # 1483
- Second payment is due on July 31, 2013 and shall be made in form of a check payable to the **Peralta Colleges Foundation** in the amount of \$609.37.
- Third payment is due on October 31, 2013 and shall be made in form of a check payable to the **California Air Pollution Control Fund** in the amount of \$609.38.

- Fourth payment is due on January 31, 2014 and shall be made in form of a check payable to the **California Air Pollution Control Fund** in the amount of \$609.38.
- Fifth payment is due on April 30, 2014 and shall be made in form of a check payable to the **California Air Pollution Control Fund** in the amount of \$609.38.
- Sixth payment is due on July 31, 2014 and shall be made in form of a check payable to the **California Air Pollution Control Fund** in the amount of \$609.38.
- Seventh payment is due on October 31, 2014 and shall be made in form of a check payable to the **California Air Pollution Control Fund** in the amount of \$609.38.
- Eighth payment is due on January 31, 2015 and shall be made in form of a check payable to the **California Air Pollution Control Fund** in the amount of \$609.38.
- The payment must be made in the form of checks. The checks with the signed settlement agreement shall be sent to:

Mr. Christopher Patno, Air Resources Engineer
Air Resources Board, Enforcement Division
9480 Telstar Ave., Suite 4
El Monte, CA 91731

- (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 with respect to unpaid payments, CCAT shall pay all costs of investigating and prosecuting the action, including reasonable attorney's fees and costs.
- (3) It is agreed that if CCAT, 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 CCAT, 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 CCAT, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of CCAT, its subsidiary, or parent company's properties, or if any deposit account or other property of

CCAT, 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 CCAT, 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) Furthermore, the payment is intended to deter and punish CCAT for violations of state environmental statutes, and these payments are payable to and for the benefit of ARB, a government unit. Therefore, it is agreed that these payments imposed on CCAT by the ARB arising from the facts described in recital paragraphs (1) – (4) are non dischargeable under 11 U.S.C. § 523 (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, payment or forfeiture payable to and for benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax payments.
- (5) CCAT shall not violate any provision of the California Vehicle Code (VC) section 38391.
- (6) CCAT shall not violate Aftermarket parts exemption procedures regulated under the California Code of Regulations (CCR), Title 13, Sections 1900 et seq., 2030-2031, 2047-2048, 2200-2207 and 2220-2225.
- (7) CCAT shall not violate the Verification Procedure (CCR, Title 13, Sections 2700-2710).
- (8) CCAT shall make sure that all terms and conditions specified in the applicable Executive Order are met prior to installing, selling, offering for sale, or advertising any Diesel Emission Control Strategy (DECS) device in California.
- (9) This Agreement constitutes the entire agreement and understanding between ARB and CCAT concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and CCAT concerning the subject matter hereof.
- (10) 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.
- (11) 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.

- (12) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California's choice-of-law rules.
- (13) 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.
- (14) SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the payments 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 payment amount was determined, including a per unit or per vehicle payment.

Payments must be set at levels sufficient to discourage violations. The payments in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in §43024.

The per unit or per vehicle payment in this case is a maximum of \$1,000.00 per unit per day for strict liability violations and \$10,000.00 per unit per day for negligent or intentional violations. We are seeking a total payment from CCAT for 1 non-compliant unit for a per unit payment of \$4,875.00 over an unspecified number of days of violation. This payment was calculated by considering all factors specified in Health and Safety Code section 43024. This payment was reduced because the violator cooperated with the investigation and because of its financial condition.

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

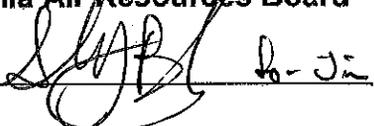
The provision being applied in this case is Health and Safety Code section 39674 because CCAT failed to comply with the Air Toxic Control Measure for In-Use Strategies to Control Emissions from Diesel Engines, Title 13, California Code of Regulations sections 2700-2710, which was adopted under authority of Health and Safety Code section 39600, et seq.

Is the amount 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. However, since the hours of operation of the non-compliant unit involved and its individual emission rate are not known, it is not practical to quantify the excess emissions.

- (15) CCAT 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 payment amount was calculated (including a per unit or per vehicle payment, if appropriate), has identified the provision of law under which the payment is being assessed and has considered and determined that this payment is being assessed under a provision of law that prohibits the emission of pollutants at a specified level. However, since the hours of operation of the non-compliant unit involved and its individual emission rates are not known, it is not practical for ARB to quantify the excess emissions.
- (16) Payments 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 payments in similar cases negotiation, and the potential costs and risk associated with litigating these particular violations. The payment was discounted based on the fact that the alleged VDEC violation was a first time violation and the violator made unusually diligent efforts to comply and to cooperate with the investigation and because of the violator's financial condition. Payments in future cases might be smaller or larger on a per unit basis.
- (17) The payment in this case was based in part on confidential business information provided by CCAT that is not retained by ARB in the ordinary course of business. The payment in this case was also based on confidential settlement communications between ARB and CCAT that ARB does not retain in the ordinary course of business either. The payment also reflects ARB's assessment of the relative strength of its case against CCAT, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that CCAT may have secured from its actions.
- (18) Now therefore, in consideration of the payment by CCAT, in the amount of four thousand eight hundred seventy-five dollars and zero cents (\$4,875.00), ARB hereby releases CCAT and its principals, officers, agents, predecessors and successors from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs (1) – (4) above. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: 

Name: James Ryden
Title: Chief, Enforcement Division
Date: 05/08/13

California Clean Air Technologies LLC

By: 

Name: Michael J. AUGAY
Title: President/CEO
Date: 4/26/2013