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 EAST BAY SANITARY COMPANY, INC. (hereinafter "EAST BAY SANITARY"), 1432 Kearny Street, El Cerrito, California 94530.

I. RECITALS

(1) California Health and Safety Code (*H&SC*) 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) *H&SC* 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 excess smoke emissions.

(3) Title 13, CCR sections 2190 et seq. was adopted under the authority of *H&SC* 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 sections 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) Title 13, CCR section 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) *H&SC* section 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 violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty of not to exceed five hundred dollars ($500.00) per vehicle."

(7) The ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.

(8) Under authority of Health and Safety Code, Section 39660 and 39601, Title 13, CCR, Sections 2020 et seq. requires Solid Waste Collection Vehicle fleet owners 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.

(10) The ARB Enforcement Division contends that EAST BAY SANITARY failed to comply with the Solid Waste Collection Vehicle Rule by not installing BACT based on the implementation schedule in Title 13, CCR Sections 2021 et seq. at their terminal in El Cerrito, California.

(11) Health and Safety Code, 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.

(12) EAST BAY SANITARY is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation, and therefore agree as follows:

II. TERMS & RELEASE

In consideration of ARB not filing a legal action against EAST BAY SANITARY for the violations alleged above, ARB and EAST BAY SANITARY agree as follows:

(1) Upon execution of this Agreement, EAST BAY SANITARY shall pay a civil penalty of Four Thousand Dollars ($4,000). Payment shall be made in check form as described below.

SETTLEMENT AGREEMENT AND RELEASE ARB AND EAST BAY SANITARY:

- three thousand dollars ($3,000) by check payable to the **California Air Pollution Control Fund, submitted by February 4, 2012.**

- one thousand dollars ($1,000) by check payable to the **Peralta Community College District, submitted by February 4, 2012.**

All payments and documents shall be sent to the attention of:

Stephen Binning, Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

(2) EAST BAY SANITARY shall not violate *H&SC* sections 43701 et seq. and 44011.6 et seq. and Title 13, CCR sections 2180 et seq., 2190 et seq., and 2485 et seq.

(3) EAST BAY SANITARY shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (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 Compliance emission regulations and the proper care and maintenance of Verified Diesel Emission Control Strategies (VDECS).

(a) EAST BAY SANITARY shall have all staff members, mechanics and technicians responsible for maintenance of VDECS attend the CCDET II class. Proof of CCDET II completion shall be provided to ARB within one year of the date of this Agreement and shall also be maintained in each applicable employee's file for the term of his or her employment, or as provided by EAST BAY SANITARY, rules, regulations, codes, or ordinance, whichever is longer.

(b) In case EAST BAY SANITARY uses a contractor for the maintenance of VDECS, EAST BAY SANITARY shall obtain proof that the contractor's staff maintaining the VDECS completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by EAST BAY SANITARY to the ARB within one year of the date of this settlement and shall also be maintained with VDECS maintenance records.

(4) EAST BAY SANITARY 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.

(5) Each 1974 or newer diesel powered heavy-duty vehicle in the EAST BAY SANITARY 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.

(6) EAST BAY SANITARY 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.

(7) EAST BAY SANITARY shall retrofit the Solid Waste Collection Vehicles (SWCV) with best available technology (BACT) within 45 days of this Agreement, to meet the implementation schedule specified in CCR, Title 13, section 2012.2. EAST BAY SANITARY will keep records of installed diesel control strategy and update the solid waste compliance plan accordingly. EAST BAY SANITARY shall affix to each SWCV a legible and durable label with complete and accurate information as specified in CCR, Title 13, section 2012.2(f)(2). This label shall be affixed to the driver's side door jamb or any other readily accessible location known to the driver.

(8) This Agreement shall apply to and be binding upon EAST BAY SANITARY, 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.

(9) This Agreement constitutes the entire agreement and understanding between ARB and EAST BAY SANITARY, concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and EAST BAY SANITARY, 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, without regard to 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) Now, therefore, in consideration of the payment by EAST BAY SANITARY in the amount of four thousand dollars ($4,000), ARB hereby releases EAST BAY SANITARY and its principals, officers, directors, agents, subsidiaries, predecessors, and successors from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs (1–11), above. The undersigned represent that they have the authority to enter into this Agreement.

(15) 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 Health and Safety Code sections 42403 and 43024.

SWCV Violations

The per vehicle penalty for the SWCV 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 SWCV violations involved in this case is $4,000 or $500 per vehicle per violation for 4 trucks for an unspecified number of days. The penalty was discounted based on the fact that this was a first time violation and the violator has cooperated with the investigation.

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

SWCV Violations

The penalty provision being applied for the Solid Waste Collection Vehicle Regulation (Title 13, CCR, section 2020 et seq.) violations is Health and Safety Code section 39674. The SWCV rule is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in Health and Safety Code Section 39660, et seq. and because EAST BAY SANITARY failed to use best available control technology on 4 vehicles as required by the Solid Waste Collection Vehicle rule during 2005-2010 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.

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

(16) EAST BAY SANITARY acknowledges that ARB has complied with SB 1402 in prosecuting and 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.

(17) 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. The penalty was discounted based on the fact that this was a first time violation. Penalties in future cases might be smaller or larger on a per unit/vehicle basis.

(18) The penalty was based on confidential settlement communications between ARB and EAST BAY SANITARY 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 EAST BAY SANITARY and reflects ARB's assessment of the relative strength of its case against EAST BAY SANITARY, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that EAST BAY SANITARY may have secured from its actions.

California Air Resources Board

By: _____

Name: James Ryden

Title: Chief, Enforcement Division

Date: 2/13/12

EAST BAY SANITARY COMPANY, INC.

By: _____

Name: Mark Figoni

Title: President

Date: 2/1/12