# 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 JB Critchley, Incorporated (hereinafter "JBC"), 1045 Simpson Street, Kingsburg, California 93631.

## I. RECITALS

(1) California Health and Safety Code sections 39650-39675 (HSC §§ 39650-39675) mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants (TAC). In 1998, following an exhaustive 10-year scientific assessment process, ARB identified particulate matter (PM) from diesel-fueled engines as a TAC. Transport Refrigeration Units (TRU) are powered by diesel fueled engines that emit this toxic PM. TRUs are regulated under the Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units and TRU Generator Sets, and Facilities Where TRUs Operate (TRU ATCM) as codified in California Code of Regulations, title 13, section 2477.1 through 2477.21 (13 CCR § 2477.1 through 2477.21).

(2) 13 CCR § 2477.5(a) provides that no owner/operator shall operate a TRU or TRU generator (gen) set in California unless it meets in-use performance standards established in § 2477.5.

(3) 13 CCR § 2477.5(e)(1)(A) requires that on or before January 31, 2009 (delayed until July 31, 2009), owner/operators of all California-based TRUs and TRU gen sets subject to this regulation shall apply for an ARB Identification Number (IDN) for all California-based TRUs or TRU gen sets operated by the operator by submitting an application to ARB.

(4) 13 CCR § 2477.5(e)(1)(F) requires that within 30 days of receipt of the ARB-issued IDN, owners/operators of California-based TRUs and TRU gen sets permanently affix or paint the IDN to both sides of the TRU chassis housing.

(5) ARB Enforcement Division has documented that JBC failed to bring the TRUs it operates in California into compliance with the in-use performance standards before the deadlines set forth in the regulation.

(6) Failure to bring the TRU fleet in compliance with applicable in-use performance standards, failure to apply for and affix ARB IDNs and failure to submit an operator report are violations of state law resulting in penalties. HSC § 39674 authorizes civil penalties of up to ten thousand dollars ($10,000) for each day that the violation occurs.

(7) In order to resolve these alleged violations, JBC 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.

(8) 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 JBC agree as follows:

## II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, the sum of four thousand five hundred dollars ($4,500.00) shall be paid on behalf of JBC no later than October 9, 2015 as follows:

- $3,375.00 payable to the **Air Pollution Control Fund**
- $1,125.00 payable to the **Peralta Colleges Foundation**

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

**Mr. Aldo Chaney**
**Air Pollution Specialist**
**Air Resources Board**
**Enforcement Division**
**9480 Telstar Avenue, Suite 4**
**El Monte, California 91731**

**Please submit the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:**

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

(2) If the Attorney General files a civil action to enforce this settlement agreement, JBC shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.

(3) 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 JBC 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 JBC through by ARB arising from the facts described in recital paragraphs (1) through (6) 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.

(4) JBC shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*

(5) JBC 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, Emission Control Label (ECL) regulation and the HDVIP.

(a) JBC 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 JBC 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, JBC 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.

(6) JBC shall comply with one or both of the following options to attend the 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's emission regulations and the proper care and maintenance of diesel exhaust after-treatment systems (DEATS).

(a) JBC shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of DEATS 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 JBC uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, JBC shall obtain proof that the contractor's staff maintaining the DEATS device(s) completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by JBC to the ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.

(7) JBC 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.

(8) Each 1974 or newer diesel powered heavy-duty vehicle in JBC fleet shall comply with the ECL regulation as codified in 13 CCR § 2183.

(9) JBC 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.

(10) Within 45 days of the execution of this Agreement, JBC shall bring its fleet of TRUs operating in California in compliance with the applicable in-use performance standards as required by 13 CCR § 2477.5(a) and submit the proof of registration in ARB's Equipment Registration system (ARBER) to Mr. Aldo Chaney, Air Pollution Specialist, ARB Enforcement Division, 9480 Telstar Avenue Suite 4, El Monte 91731.

(11) JBC shall not violate TRU ATCM as codified in 13 CCR § 2477.

(12) JBC shall not violate the Truck & Bus regulation as codified in 13 CCR § 2025 *et seq.*

(13) This Agreement shall apply to and be binding upon JBC, 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 JBC concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and JBC 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.

**SB 1402 Statement:**

(19) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB 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.

TRU Violations

The per unit penalty for the TRU violations involved in this case is a maximum of $1,000 per unit per day for strict liability violations or $10,000 per vehicle per day for negligent or intentional violations pursuant to HSC § 39674. The penalty obtained for the TRU violations involved in this case is $4,500.00 for six TRU violations or $750.00 per violation.

The penalty was discounted based on the fact that this was a first time violation and the violator made diligent efforts to comply 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.**

TRU Violations

The penalty provision being applied for the TRU ATCM (13 CCR § 2477) violations is HSC § 39674 because the TRU rule is an Air Toxic Control Measure adopted pursuant to authority contained in HSC § 39002 et seq., 39650-39675 and JBC, as an owner of TRUs, failed to bring all TRUs in its fleet into compliance by the deadlines set forth in the TRU ATCM.

**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.**

TRU 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 TRUs involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

(20) JBC 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 § 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 JBC that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation

between ARB and JBC and reflects ARB's assessment of the relative strength of its case against JBC, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that JBC may have secured from its actions.

(23) Now therefore, in consideration of the payment on behalf of JBC to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases JBC 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 (6) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

| **California Air Resources Board** | | **JB Critchley, Incorporated** | |
|---|---|---|---|
| Signature: | | Signature: | |
| Print Name: | Dr. Todd P. Sax | Print Name: | Scott Critchley |
| Title: | Chief, Enforcement Division | Title: | owner |
| Date: | 10/16/15 | Date: | 9/15/15 |