

## 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 Lerma Trucking, Inc. (hereinafter "LERMA TRUCKING"), 437 Tudor Way, Salinas, California 93906.

### I. RECITALS

- (1) HSC §§ 39650-39675 mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive ten-year scientific assessment process, ARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use on-road diesel vehicles are powered by diesel fueled engines that emit toxic PM. On-road vehicles are controlled under the Truck and Bus regulation, as codified in 13 CCR § 2025.
- (2) 13 CCR § 2025(e)(1)(B) states: "Starting January 1, 2012, for all vehicles with GVWR greater than 26,000 lbs, excluding school buses, fleets must meet the requirements of 13 CCR § 2025(g) or fleets that report may instead comply with the phase-in option of 13 CCR § 2025(i)."
- (3) Failure to comply with the requirements of 13 CCR § 2025 is a violation of state law resulting in penalties. HSC §§ 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) or ten thousand dollars (\$10,000), respectively, for each day in which the violation occurs.
- (4) LERMA TRUCKING has elected to meet the requirements of the Engine Model Year Compliance Schedule provided for in 13 CCR § 2025(g).
- (5) 13 CCR § 2025(g) requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs. (heavier vehicles) meet PM Best Available Control Technology (BACT) requirements for all 1996 through 1999 engine model years by January 1, 2012 *and* all 2000 through 2004 engine model years by January 1, 2013.
- (6) ARB has documented that LERMA TRUCKING failed to meet PM BACT requirements for all 1996 through 1999 engine model years by January 1, 2012 and all 2000 through 2004 engine model years by January 1, 2013.
- (7) Transport Refrigeration Units (TRU) are powered by diesel fueled engines that emit 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 13 CCR § 2477.1 through 2477.21.

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- (8) 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.
- (9) 13 CCR § 2477.5(e) requires that 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.
- (10) 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.
- (11) 13 CCR § 2477.6(a) requires all operators to submit an Operator Report to ARB which includes TRU and TRU gen set inventory information for each TRU and TRU gen set based in California that is owned or leased by the operator.
- (12) ARB Enforcement Division has documented that LERMA TRUCKING 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, failed to submit a TRU Operator Report, failed to register their TRUs in ARB's Equipment Registration system (ARBER), and failed to affix ARB IDNs to both sides of the TRUs in their fleet within 30 days of receipt of ARB IDNs.
- (13) 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.
- (14) In order to resolve these alleged violations, LERMA TRUCKING has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, ARB accepts this Agreement in termination and settlement of this matter.
- (15) 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, ARB and LERMA TRUCKING agree as follows:

## II. TERMS AND RELEASE

In consideration of ARB not filing a legal action against LERMA TRUCKING for the alleged violations referred to above, and LERMA TRUCKING's payment of

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the penalties set forth in Section 1 below, ARB and LERMA TRUCKING agree as follows:

- (1) Upon execution of this Agreement, LERMA TRUCKING shall pay a civil penalty of twenty one thousand one hundred dollars (\$21,100.00). Payment shall be made in 12 payments as described below, beginning on **February 6, 2017**.

<b>Payment Due Date:</b>	<b>In the Amount of and Payable to the:</b>	
February 6, 2017	\$1,800.00	San Joaquin Valley Air Pollution Control District
March 6, 2017	\$1,750.00	San Joaquin Valley Air Pollution Control District
April 6, 2017	\$1,750.00	San Joaquin Valley Air Pollution Control District
May 5, 2017	\$1,750.00	San Joaquin Valley Air Pollution Control District
June 5, 2017	\$1,750.00	San Joaquin Valley Air Pollution Control District
July 5, 2017	\$1,750.00	San Joaquin Valley Air Pollution Control District
August 7, 2017	\$1,800.00	Air Pollution Control Fund
September 5, 2017	\$1,750.00	Air Pollution Control Fund
October 5, 2017	\$1,750.00	Air Pollution Control Fund
November 6, 2017	\$1,750.00	Air Pollution Control Fund
December 5, 2017	\$1,750.00	Air Pollution Control Fund
January 5, 2018	\$1,750.00	Air Pollution Control Fund

For checks made to the **San Joaquin Valley Air Pollution Control District**, include the following notation in the memo line of the check: **"For the School Bus and Diesel Emission Reduction SEP"**

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

**Mr. Nelson Van  
Air Pollution Specialist  
California Air Resources Board  
Enforcement Division  
P.O. Box 2815  
Sacramento, California 95812**

**Please submit each payment by the applicable payment due date along with the corresponding "Settlement Agreement Payment Transmittal Form" (Attachment A) to:**

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

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- (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, LERMA TRUCKING shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

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

- (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 LERMA TRUCKING 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 LERMA TRUCKING by ARB arising from the facts described in recital paragraphs (1) through (13) 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) LERMA TRUCKING 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) LERMA TRUCKING shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to ARB within 45 days of this agreement.
- (6) LERMA TRUCKING shall remain compliant with the ECL regulation as codified in 13 CCR § 2183.

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- (7) LERMA TRUCKING 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.
- (8) LERMA TRUCKING shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025.
- (9) LERMA TRUCKING shall submit proof of compliance with the Truck and Bus regulation (as codified in 13 CCR § 2025), within 45 days of the execution of this Agreement, to **Mr. Nelson Van at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.**
- (10) Within 45 days of the execution of this Agreement, LERMA TRUCKING 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 apply for an ARB IDN for each of the California-based TRUs or TRU gen sets that it owns and/or operates as required by 13 CCR § 2477.5(e) and affix the IDN to both sides of each TRU or TRU gen set within 30 days of receiving the IDN from ARB as required by 13 CCR § 2477.5(e)(1)(F). LERMA TRUCKING shall submit the proof of reporting in ARBER to **Mr. Nelson Van at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.**
- (11) LERMA TRUCKING shall submit a TRU Operator Report as required by 13 CCR § 2477.6(a) within 45 days of execution of this Agreement to **Mr. Nelson Van at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.**
- (12) LERMA TRUCKING shall not violate TRU ATCM as codified in 13 CCR § 2477.
- (13) This Agreement shall apply to and be binding upon LERMA TRUCKING, 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 LERMA TRUCKING concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and LERMA TRUCKING 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.

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- (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 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.

#### Truck and Bus Violations

The per unit penalty for the Truck and Bus 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 Truck and Bus violations involved in this case for failure to meet the requirements of the Engine Model Year Compliance Schedule for heavier vehicles is \$19,100.00 or \$100.00 per month of violation:

- \$4,300.00 for 1 vehicle with a 1996 through 1999 model year engine (43 months in violation); and
- \$10,600.00 for 2 vehicles with a 1996 through 1999 model year engine (53 months in violation); and
- \$4,200.00 for 1 vehicle with a 2000 model year engine (47 months in violation)

The penalty was discounted due to extreme financial hardship and 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.

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 \$2,000.00 for 8 noncompliant TRUs operated by LERMA TRUCKING or \$250.00 for each violation.

The penalty was discounted due to extreme financial hardship and 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.**

Truck and Bus Violations

The penalty provision being applied for the Truck and Bus regulation (13 CCR § 2025) violations in this case is HSC § 39674 because the Truck and Bus regulation is an Airborne Toxic Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because LERMA TRUCKING failed to bring their diesel fleet into compliance by the deadlines set forth in 13 CCR § 2025(g).

TRU Violations

The penalty provision being applied for the TRU ATCM (13 CCR § 2477) violations (including registration and labeling) 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 LERMA TRUCKING, 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.**

Truck and Bus 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 trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

TRU Violations

The provisions cited above do prohibit emissions above a specified level of g/hp-hr for failure to bring TRUs into compliance with the in-use performance standards. 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) LERMA TRUCKING 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 LERMA TRUCKING that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and LERMA TRUCKING and reflects ARB's assessment of the relative strength of its case against LERMA TRUCKING, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that LERMA TRUCKING may have secured from its actions.
- (23) Now therefore, in consideration of the payment on behalf of LERMA TRUCKING to the Air Pollution Control Fund and the San Joaquin Valley Air Pollution Control District, ARB hereby releases LERMA TRUCKING and their principals, officers, agents, predecessors and successors from any and all claims, ARB may have or have in the future based on the circumstances described in paragraphs (1) through (13) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.



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**California Air Resources Board**

Signature: 

Print Name: Dr. Todd P. Sax

Title: Chief, Enforcement Division

Date: 3/4/17

**LERMA TRUCKING, INC.**

Signature: 

Print Name: David Lerma

Title: President

Date: 2/27/17