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 Cal Mex International Brokers (hereinafter "Mex-Cal Truckline "), 7921 Airway Rd, San Diego, CA,92154.

I. RECITALS

(1) HSC section 39650-39675 mandates the reduction of the emission of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the ARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. Drayage trucks are controlled under the Drayage Truck Regulation as codified in title 13 CCR, section 2027.

(2) Title 13 CCR, section 2027 (d)(3)(A) requires drayage truck owners meet all applicable emission requirements and deadlines set forth in Phases 1 and 2 detailed in Section 2027 (d).

(3) Title 13 CCR, section 2027 (d)(5)(A)(2) requires drayage truck motor carriers only dispatch drayage trucks that meet emission standards and compliance deadlines set forth in Phases 1 and 2 in Section 2027 (d). Section 2027 (d)(5)(A)(3) requires motor carriers only dispatch drayage trucks that are registered and in good standing with the Drayage Truck Registry (DTR).

(4) The ARB Enforcement Division has documented that Mex-Cal Truckline, as a drayage truck owner, failed to bring all drayage trucks in its fleet into compliance by the deadlines set forth in the Drayage Truck Regulation. The ARB Enforcement Division has also documented that Mex-Cal Truckline, as a motor carrier, dispatched drayage trucks that are either not compliant with the emissions standards set forth in the Drayage Truck Regulation or not registered with the DTR.

(5) Failure to comply with Title 13 CCR, section 2027 (d)(5)(A)(2) is a violation of state law resulting in penalties. HSC, section 39674, authorize 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) ARB has documented Mex-Cal Truckline violated a Superior Court judgment entered into on Dec 28, 2008 with Air Resources Board by failing to comply with all applicable statutes and regulations enacted by ARB.

(7) In order to resolve these alleged violations, Mex-Cal Truckline, 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.

(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 Mex-Cal Truckline agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, Mex-Cal Truckline shall pay a civil penalty of $ 300,000. Payment shall be made in check form as described below, and payments shall be made in 12 monthly payments beginning on **November 28, 2012.**

SETTLEMENT AGREEMENT AND RELEASE ARB AND **Mex-Cal Truckline**:

Payment Due Date:		**In the Amount of and Paid to:**
(1)	11/28/12	**$150,000** paid to **California Air Pollution Control Fund**
(2)	12/28/12	**$12,500** paid to **California Air Pollution Control Fund**
(3)	1/28/13	**$12,500** paid to **California Air Pollution Control Fund**
(4)	2/28/13	**$12,500** paid to **California Air Pollution Control Fund**
(5)	3/28/13	**$12,500** paid to **California Air Pollution Control Fund**
(6)	4/28/13	**$12,500** paid to **California Air Pollution Control Fund**
(7)	5/28/13	**$12,500** paid to **California Air Pollution Control Fund**
(8)	6/28/13	**$12,500** paid to **California Air Pollution Control Fund**
(9)	7/28/13	**$12,500** paid to **California Air Pollution Control Fund**
(10)	8/28/13	**$12,500** paid to **California Air Pollution Control Fund**
(11)	9/28/13	**$12,500** paid to **California Air Pollution Control Fund**

(12)	10/28/13	**$12,500** paid to **California Air Pollution Control Fund**
(13)	11/28/13	**$12,500** paid to **California Air Pollution Control Fund**

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

(3) It is agreed that if Mex-Cal Truckline, 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 Mex-Cal Truckline, 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 Mex-Cal Truckline, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of Mex-Cal Truckline, its subsidiary, or parent company's properties, or if any deposit account or other property of Mex-Cal Truckline, 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 Mex-Cal Truckline, 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) Mex-Cal Truckline shall not violate HSC sections 43701 *et seq.*, 44011.6 *et seq., and* Title 13 CCR, sections 2027*et seq or any other provision of law under the jurisdiction of the ARB.*

(5) Mex-Cal Truckline shall not dispatch drayage trucks that are not compliant with the emission standards set forth in the Drayage Truck Regulation or trucks that are not registered with the DTR. The ARB reserves the right to audit the dispatch records of Mex-Cal Truckline for compliance with Title 13 CCR, Section 2027 (d)(5) any time in the future.

(6) Mex-Cal Truckline shall not violate the Drayage Truck Regulation, as codified in Title 13 CCR, section 2027.

(7) Mex-Cal Truckline 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 the Mex-Cal Truckline fleet shall comply with the emission control label (ECL) requirements set forth in the Title 13 CCR section 2183(c).

(9) Mex-Cal Truckline shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in Title 13 CCR section 2485, within 45 days of this Agreement.

(10) Mex-Cal Truckline shall not violate the Truck and Bus regulation as codified in Title 13 CCR, section 2025.

(11) Mex-Cal Truckline 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) Mex-Cal Truckline 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 Mex-Cal Truckline uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, Mex-Cal Truckline 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 Mex-Cal Truckline to the ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.

(12) This Agreement shall apply to and be binding upon Mex-Cal Truckline, 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.

(13) This Agreement constitutes the entire agreement and understanding between ARB and Mex-Cal Truckline concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Mex-Cal Truckline concerning the subject matter hereof.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) 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 HSC sections 42403 and 43024.

Drayage Violations

The per vehicle penalty for the drayage 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 pursuant to HSC section 39674. The penalty obtained for the drayage motor carrier violations involved in this case is $300,000 for Mex-Cal Truckline's 333 noncompliant dispatches at approximately $900.90 per dispatch, in consideration of the facts that Mex-Cal Truckline is a repeat violator, but cooperated with the investigation.

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

Drayage Violations

The penalty provision being applied for the Drayage Truck Regulation (Title 13 CCR, section 2027) violations in this case is HSC section 39674 because the Drayage Truck Regulation is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in *H&SC* sections 39650 - 39675.

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.

Drayage Violations

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.

(19) Mex-Cal Truck Line 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 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.

(20) 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.

(21) The penalty was based on confidential settlement communications between ARB and Mex-Cal Truckline 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 Mex-Cal Truckline and reflects ARB's assessment of the relative strength of its case against Mex-Cal Truckline, the desire to avoid the uncertainty, burden and expense of

litigation, obtain swift compliance with the law and remove any unfair advantage that Mex-Cal Truckline may have secured from its actions.

(22) Now therefore, in consideration of the payment on behalf of Mex-Cal Truckline to the California Air Pollution Control Fund and the Peralta Community College District, the ARB hereby releases Mex-Cal Truckline 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 (7) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: _____

Name: James N. Goldstene

Title: Executive Officer

Date: 11-14-2012

Mex-Cal Truckline

By: _____

Name: Juan Guillen

Title: President

Date: 11-06'12