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 North American Trailer, LLC (hereinafter "NAT"), 2896 West 2100 South Street, Salt Lake City, UT 84119

I. RECITALS

(1) Health and Safety Code, Section 39650-39675 mandates the reduction of the emissions of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the Air Resources Board identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. Transport Refrigeration Units (TRUs) are powered by diesel fueled engines that emit toxic particulate matter. TRUs are controlled under Title, 13 California Code of Regulations (CCR), section 2477.

(2) CCR, Title13, section 2477 (e) (1) (A) (1) states: No owner/operator shall operate a TRU or TRU generator (gen) set in California unless it meets the in-use emission category performance standard.

(3) CCR, Title 13, section 2477 (f) (1) (A) (1) sates: All operators subject to this regulation shall submit an Operator Report to ARB by January, 31, 2009.

(4) CCR, Title13, section 2477 (f) (1) (A) (2) states: The Operator Report shall be updated within 30 days when any changes to information occur.

(5) CCR, Title13, section 2477 (f) (2) (D) states: Failure to report or submittal of false information is a violation of state law subject to civil penalty

(6) The ARB Enforcement Division has documented that NAT, failed to update their Operator Report within 30 days of changes to their TRU fleet information, resulting in false information.

(7) 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.

(8) NAT 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 NAT, for the violations alleged above, ARB and NAT agree as follows:

(1) Upon execution of this Agreement, NAT shall pay a civil penalty of two thousand seven hundred dollars ($2,700.00). Payment shall be made in check form as described below and the payments shall be submitted within 15 days of signing this agreement.

- $2,025.00 made out to **California Air Pollution Control Fund**
- $675.00 made out to **Peralta Community College District**

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

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

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

(3) NAT shall comply with the TRU in-use performance standards set forth in Title 13, CCR, Section 2477 (f) (2). Within 45 days of the execution of this Agreement, NAT shall submit the proof of the compliance with the TRU to Mr. Eric Bissinger, Air Pollution Specialist, ARB Enforcement Division, Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812.

(4) NAT shall not violate the TRU ATCM, as codified in CCR, Title 13, Section 2477.

(5) This Agreement shall apply to and be binding upon NAT, 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.

(6) This Agreement constitutes the entire agreement and understanding between ARB and NAT, concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and NAT, concerning the subject matter hereof.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) **SB 1402 Statement**

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.

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 unit per day for negligent or intentional violations pursuant to H&SC section 39674. The penalty obtained for the 9 TRU violations involved in this case is $2,700 or $300 for each TRU entered with false information in the Operator Report.

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

TRU Violations

The penalty provisions being applied for the TRU ATCM (Title 13, CCR, section 2477) violations in this case is H&SC section 39674 because the TRU ATCM is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in H&SC section 39002, et seq., 39650-39675 and because NAT failed to update changes to their Operator Report within 30 days and submitted false information on 9 TRUs in its fleet.

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 penalty being assessed under this provision of law does not prohibit the emissions of pollutants.

(12) NAT 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 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.

(13) 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 and the violator made unusually diligent efforts to cooperate with the investigation. Penalties in future cases might be smaller or larger on a per unit/vehicle basis.

(14) The penalty was based on confidential settlement communications between ARB and NAT that ARB does not retain in the ordinary course of business either. The penalty is the product of an arm's length negotiation between ARB and NAT, and reflects ARB's assessment of the relative strength of its case against NAT, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that NAT may have secured from its actions.

(15) Now, therefore, in consideration of the payment by NAT, in the amount of two thousand seven hundred dollars ($2,700.00), ARB hereby releases NAT 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) through (7) 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: 11/27/12

North American Trailer, LLC

By: _____

Name: D.E. Kelley Jr

Title: President

Date: 11/20/12