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 NATURE'S PRODUCE (hereinafter "NATPRO"), 2622 S. Alameda Street, Vernon, California 92258

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 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 particulate matter. On-Road vehicles are controlled under California Code of Regulations, title 13, section 2025 (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 TACs not to exceed one thousand dollars ($1,000) or ten thousand dollars ($10,000), respectively, for each day in which the violation occurs.

(4) NATPRO 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. meet PM BACT requirements for all 2000 through 2004 engine model years by January 1, 2013.

(6) ARB has documented that NATPRO failed to meet PM BACT requirements for all 2000 through 2004 engine model years by January 1, 2013.

(7) In order to resolve these alleged violations, NATPRO has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, 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, ARB and NATPRO agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, NATPRO shall pay a civil penalty of $50,000.00. Payment shall be made in 12 monthly payments as described below, beginning on July 15, 2015.

Payment Due Date:	In the Amount of and Payable to:	
July 15, 2015	**$4,167.00**	to **the Peralta Colleges Foundation**
August 15, 2015	**$4,167.00**	to **the Peralta Colleges Foundation**
September 15, 2015	**$4,166.00**	to **the Peralta Colleges Foundation**
October 15, 2015	**$4,167.00**	to **the Air Pollution Control Fund**
November 15, 2015	**$4,167.00**	to **the Air Pollution Control Fund**
December 15, 2015	**$4,167.00**	to **the Air Pollution Control Fund**
January 15, 2016	**$4,167.00**	to **the Air Pollution Control Fund**
February 15, 2016	**$4,167.00**	to **the Air Pollution Control Fund**
March 15, 2016	**$4,167.00**	to **the Air Pollution Control Fund**
April 15, 2016	**$4,167.00**	to **the Air Pollution Control Fund**
May 15, 2016	**$4,167.00**	to **the Air Pollution Control Fund**
June 15, 2016	**$4,164.00**	to **the Air Pollution Control Fund**

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

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

Please send 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) 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, NATPRO 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 NATPRO, 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 NATPRO, 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 NATPRO, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of NATPRO's, its subsidiary, or parent company's properties, or if any deposit account or other property of NATPRO, 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 NATPRO, 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) 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 NATPRO 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 NATPRO 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.

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

(6) NATPRO 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, ECL and the HDVIP.

(a) NATPRO 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 NATPRO 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, NATPRO 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.

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

(8) NATPRO 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.

(9) NATPRO 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) NATPRO shall not violate the Truck & Bus regulation as codified in 13 CCR § 2025.

(11) NATPRO 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. Eric Bissinger, Air Pollution Specialist, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812.**

(12) This Agreement shall apply to and be binding upon NATPRO, 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 NATPRO concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and NATPRO 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 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 is $50,000.00 for 14 vehicles with a 2000 through 2004 model year engine (12

months in violation in year 2013) and 12 vehicles with a 2000 through 2004 model year engine (10 months in violation in 2014).

The penalty was discounted based on the fact that this was a first time violation and the violator made swift diligent efforts to comply and cooperated 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 a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because NATPRO failed to bring their diesel fleet into compliance by the deadlines set forth in 13 CCR § 2025(g).

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

(19) NATPRO 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.

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

(22) Now therefore, in consideration of the payment on behalf of NATPRO to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases NATPRO 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 paragraph (1) through (6) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board		**Nature's Produce**	
Signature:	Ellen M. Peter	Signature:	
Print Name:	Ellen M. Peter	Print Name:	RICK POLISKY
Title:	Chief Counsel	Title:	Pres + CEO
Date:	7/14/2015	Date:	6-18-15