

## 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 the Peninsula Corridor Joint Powers Board (hereinafter "PCJPB"), 1250 San Carlos Avenue, San Carlos, CA 94070.

### I. RECITALS

- (1) California Health and Safety Code (*H&SC*) Section 44011.6 established the Heavy Duty Vehicle Inspection Program (HDVIP). It authorizes ARB to inspect on-road heavy-duty vehicles for excessive smoke emissions and engine tampering and to issue citations, accordingly. The program also requires the vehicle owner to repair its engines that exceed the prescribed ARB smoke opacity standards, perform a post-repair opacity test, and submit proof of repairs and any assessed penalties under the Regulations of the Heavy-Duty Smoke Inspection Program, Chapter 3.5, Sections 2180-2188, Title 13, California Code of Regulations (CCR).
- (2) *H&SC* Section 43701 provides that ARB shall adopt regulations that require owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excess smoke emissions.
- (3) Title 13, CCR sections 2190 et seq. were adopted under the authority of *H&SC* section 43701 and, with limited exceptions which are not applicable here, apply to all heavy-duty diesel powered vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California.
- (4) Title 13, CCR sections 2190 et seq. authorize the Periodic Smoke Inspection Program (PSIP) which requires the owners and operators of California based vehicle fleets of two or more heavy duty diesel motor vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California to conduct annual smoke opacity inspections of their vehicles that are four years older than the model year of the vehicle's engine.
- (5) Title 13, CCR section 2192 (a) requires inter alia that the owner of the vehicle "[t]est the vehicle for excessive smoke emissions periodically according to the inspection intervals specified in section 2193 (a), (b), and (c)", "[m]easure the smoke emissions for each test...", "[r]ecord the smoke test opacity levels and other required test information as specified in section 2194..." and "[k]eep the records specified in section 2194 for two years after the date of inspection."

- (6) *H&SC* Section 43016 states, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty of not to exceed five hundred dollars (\$500.00) per vehicle."
- (7) The ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.
- (8) ARB contends PCJPB failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for 2007 and 2008 in violation of Title 13, CCR Sections 2190 et seq.
- (9) The Fleet Rule for Transit Agencies – Transit Fleet Vehicle Requirements, Section 2023.2 (a)(1) of Title 13 of the CCR, states that beginning December 31, 2007 through December 30, 2010, a transit agency shall not operate transit fleet vehicles with NOx fleet average exceeding 3.2 g/bhp-hr, unless void of 1997 and earlier model year engines. The ARB alleges that PCJPB's NOx fleet average as of December 31, 2007 was 3.71 g/bhp-hr and was not void of 1997 and earlier model year engines.
- (10) The Fleet Rule for Transit Agencies - Transit Fleet Vehicle Requirements, Section 2032.2(b)(1) of Title 13 of the CCR, states that no later than December 31, 2007, the diesel PM emission total for a transit agency's transit fleet vehicle fleet shall be no more than 60 percent of its diesel PM emission total on January 1, 2005. The PCJPB reported to the ARB that due to the PM emissions of the PCJPB's shuttle vehicles, which are owned, operated and maintained by the PCJPB's shuttle vehicle contractor, the PCJPB diesel PM emission total as of December 31, 2007 was more than 60 percent of its diesel emission total on January 1, 2005.
- (11) 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.
- (12) ARB contends that if the facts described in recital paragraphs (8)–(10) were proven, civil penalties could be imposed against PCJPB, as provided in *H&SC* section 39674.
- (13) PCJPB 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 PCJPB, for the Violations alleged above, ARB and PCJPB agree as follows:

(1) Upon execution of this Agreement, PCJPB shall pay a civil penalty of \$15,500.00. Payment shall be made in check form as described below and the full amount shall be submitted along with the signed Settlement Agreement and Release.

- \$11,625.00 to the **California Air Pollution Control Fund**.
- \$3,875.00 to the **Peralta Community College District**.

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

Mr. Brad Penick, Investigator/Air Pollution Specialist  
Air Resources Board, Enforcement Division  
P.O. Box 2815  
Sacramento, CA 95812

(2) PCJPB shall not violate *H&SC* Sections 43701 et seq. and 44011.6 et seq. and Title 13, *CCR* Sections 2180 et seq., 2190 et seq., and 2485 et seq.

(3) PCJPB shall have all staff responsible for compliance with the PSIP and the HDVIP attend the California Council on Diesel Education and Technology (CCDET) I & II classes, as described on the ARB's webpage at <http://www.arb.ca.gov/enf/hdvip/hdvip.htm> . These classes are conducted by various California Community Colleges and instruct attendees on compliance with the PSIP and the HDVIP. Proof of CCDET I & II completion shall be provided to ARB within one year of the date of this Agreement and shall also be maintained in each applicable employee's file for the term of his or her employment, or as provided by PCJPB rules, regulations, codes, or ordinances, whichever is longer. In case PCJPB uses a contractor to perform the annual smoke opacity testing required under the PSIP, PCJPB shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET I & II courses within the past four years. This proof of CCDET I & II completion shall be provided by PCJPB to the ARB within one year of the date of this settlement and shall also be maintained with the annual PSIP records.

(4) PCJPB shall submit copies of all PSIP compliance records for years 2011, 2012 and 2013 to the ARB by January 31 of the following year. Copies shall be addressed to the attention of Brad Penick at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812. The ARB

reserves the right to visit any PCJPB fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

- (5) PCJPB shall complete Low NOx Software Upgrades (reflash) on all applicable heavy duty diesel engines operating in California and report back to the ARB within 45 days of execution of this agreement.
- (6) Each 1974 or newer diesel powered heavy-duty vehicle in the PCJPB fleet shall comply with the emission control label (ECL) requirements set forth in the CCR, Title 13, Section 2183 (c) within 45 days of execution of this agreement.
- (7) PCJPB shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in CCR, Title 13, Section 2485, within 45 days of execution of this Agreement.
- (8) Within 180 days of execution of this agreement, PCJPB shall submit the proof of compliance with the Fleet Rule for Transit Agencies-Transit Fleet Vehicle Requirements to the ARB.
- (9) No later than December 31, 2010, the diesel PM emission total for PCJPB's transit fleet vehicle fleet shall be no more than 20 percent of its diesel PM emission total on January 1, 2005, or equal to 0.01 g/bhp-hr times the total number of transit fleet vehicles in the current fleet, whichever is greater.
- (10) Beginning December 31, 2010, PCJPB's transit fleet vehicles' NOx average shall not exceed 2.4 g/bhp-hr or PCJPB shall retire all 2001 and earlier model year engines in transit fleet vehicles by December 31, 2010.
- (11) This Agreement shall apply to and be binding upon PCJPB, 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.
- (12) This Agreement constitutes the entire agreement and understanding between ARB and PCJPB, concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and PCJPB, concerning the subject matter hereof.
- (13) 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.
- (14) 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.

- (15) 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.
- (16) 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.
- (17) Now, therefore, in consideration of the payment by PCJPB, in the amount of fifteen thousand five hundred dollars (\$15,500.00), ARB hereby releases PCJPB 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 (8)-(10), above. The undersigned represent that they have the authority to enter into this Agreement.

**California Air Resources Board**

By: Ellen M. Peter

Name: Ellen M. Peter  
Title: Chief Counsel  
Date: 6/2/2011

**Peninsula Corridor Joint Powers Board**

By: Michael J. Scanlon

Name: Michael J. Scanlon  
Title: EXECUTIVE DIRECTOR  
Date: 5/6/2011