SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is entered into between the State of California Air Resources Board (ARB), with principal location at 1001 I Street, Sacramento, California 95814, and Progress Rail Services, with locations in Oakland, San Bernardino, San Diego and Terminal Island, California and corporate office located at 1600 Progress Drive, Albertville, Alabama 35950.

I. RECITALS

(1) Health and Safety Code (H&SC), sections 39650-39675 (H&SC §§ 39650-39675) mandate the reduction of the emission of substances that have been determined to be toxic air contaminants (TAC). In 1998, following an exhaustive 10-year scientific assessment process, the Air Resources Board (ARB) identified particulate matter (PM) from diesel-fueled engines as a TAC. Mobile cargo handling equipment (CHE) is powered by diesel-fueled engines that emit toxic PM. Chapter 9, division 3, California Code of Regulations (CCR), title 13, section 2479 (13 CCR § 2479) regulates emissions of diesel particulate matter from CHEs.

(2) The purpose of the CHE regulation is to reduce diesel particulate matter (PM) and criteria pollutant emissions from compression ignition (CI) mobile CHE that operates at ports and intermodal rail yards in the state of California.

(3) The CHE regulation applies to any person who conducts business in California, who sells, offers for sale, leases, rents, purchases, owns, or operates any CI mobile CHE that operates at any California port or intermodal rail yard.

(4) Any CI mobile CHE that operates at any California port or intermodal rail yard must meet the performance requirements outlined in 13 CCR § 2479.

(5) Each terminal owner or operator shall submit an annual report to the EO by January 31, 2007, and by each January 31 annually, through 2016 as outlined in 13 CCR § 2479.

(6) Failure to comply with 13 CCR § 2479 is a violation of state law resulting in penalties. H&SC §§ 39674, 39675, 42400 et seq., 42402 et seq., and 42410 authorize civil penalties for the violation of the programs for the regulation of TACs 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.

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(7) ARB Enforcement Division staff, with the cooperation of Progress Rail Services, has alleged that certain Progress Rail Services' CHE in California, do not conform to the requirements of 13 CCR § 2479 in violation of the CHE regulation. In particular, these alleged violations involve the lease, rental, purchase, and ownership of CI mobile CHE that operates at Progress Rail Services' California port facilities.

(8) In order to resolve the alleged violations described herein, Progress Rail Services has, without admitting or denying the alleged violations herein, taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, ARB accepts this Agreement in termination and settlement of this matter.

II. TERMS AND CONDITIONS

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 alleged violations and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and Progress Rail Services agree as follows:

(1) Upon execution of this Agreement, the sum of three hundred ninety thousand, seven hundred and thirty three dollars shall be paid on behalf of Progress Rail Services no later than October 31, 2014, as follows:

- $293,050.00 to the Air Pollution Control Fund
- $97,683.00 to the San Joaquin Valley Air Quality Management District School Bus Diesel Particulate Filter Retrofit Supplemental Environmental Project

Please send the signed Settlement Agreement to:

Michelle Shultz Wood, Staff Air Pollution Specialist
Air Resources Board, Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, California 91731

Please submit the payments along with the attached "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) If the Attorney General files a civil action to enforce this settlement agreement, Progress Rail Services shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(3) Progress Rail Services shall not violate 13 CCR § 2479.

(4) Progress Rail Services has corrected, prior to the execution of this Agreement, all equipment alleged to have been in violation and cited in the Notice of Violation #071012-HCP-06 dated March 15, 2013, by selling, retiring, retrofitting, and replacing the alleged noncompliant equipment in compliance with all requirements as set forth in 13 CCR § 2479.

(5) Progress Rail Services has provided documentation that proves that the alleged violations have been corrected.

(6) This Agreement constitutes the entire agreement and understanding between ARB and Progress Rail Services concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Progress Rail Services 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 ARB to provide information on the basis for the penalties it seeks (see H&SC § 39619.7). This information, which is provided throughout this settlement agreement, is summarized here.

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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 H&SC section 43024 (H&SC § 43024).

The per unit or per vehicle penalty in this case is a maximum of $1,000.00 per unit per day for strict liability violations, and $10,000.00 per unit per day for negligent or intentional violations. The penalty in this case was calculated as follows: 34 units in violation at $10,617 (approximately 100% of the price to retrofit each unit and bring it into compliance with the CHE regulation) and four years of reporting violations at $ 10,000 per facility per year, discounted by 25% because this is an innocent, first time violation and that Progress Rail Services has cooperated with the investigation.
This penalty was determined based on all factors specified in H&SC §§ 42403 and 43024.

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

The penalty provision being applied in this case is H&SC § 39674 because Progress Rail Services failed to comply with the Air Toxic Control Measure for In-Use Strategies to Control Emissions from Diesel Engines, CCR, title 13, sections 2700-2711, which was adopted under authority of H&SC § 39674, et seq.

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.

The provisions cited above do prohibit emissions above a specified level. However, since the hours of operation of the noncompliant units involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

(12) Progress Rail Services 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 H&SC § 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), 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. However, since the hours of

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operation of the noncompliant units involved and their individual emission rates are not known, it is not practical for ARB to quantify the excess emissions.

(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 case negotiations, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.

(14) The penalty in this case was based in part on confidential business information provided by Progress Rail Services that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and Progress Rail Services that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against Progress Rail Services, the desire to avoid the uncertainty, burden, and expense of litigation, to obtain swift compliance with the law, and to remove any unfair advantage that Progress Rail Services may have secured from its actions.

(15) Now therefore, in consideration of the payment on behalf of Progress Rail Services to the California Air Resources Board, for deposit into the California Air Pollution Control Fund, ARB hereby releases Progress Rail Services and their principals, officers, agents, predecessors, and successors from any and all claims for past violations of the CHE regulation alleged in recital paragraph 7. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: _____

Name: Richard W. Corey
Title: Executive Officer
Date:

Progress Rail Services

By: _____

Name: John Newman
Title: V.P.
Date: 11-18-14

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