

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 R & F DISPOSAL, INC., P.O. Box 425, McFarland, CA 93250.

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. was 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."

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- (7) The ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles for 2011 and 2012 in violation of Title 13, CCR Sections 2190 *et seq.*
- (8) ARB contends R & F Disposal Inc. failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for 2011 and 2012 in violation of Title 13, CCR Sections 2190 *et seq.*
- (9) Under authority of California Health and Safety Code, section 39601 and 39660, Title 13, CCR, Sections 2020 and 2021 *et seq.* requires owners of diesel fueled solid waste collection vehicles over 14,000 pounds gross vehicle weight with model-year engines 1960 to 2006 used to collect solid waste to use best available control technology for each solid waste collection vehicle in the active fleet. Records of the installed diesel emission control strategies and corresponding compliance plan must be accessible at the terminal. Each solid waste collection vehicle must have a legible and durable label with complete and accurate information affixed to the driver's side doorjamb or another readily accessible location known to the driver.
- (10) The ARB contends that R & F Disposal Inc. failed to install best available control technology to solid waste collection vehicles in its fleet according to the implementation schedule outlined in Title 13, CCR, Sections 2021 *et seq.* at their terminal in McFarland, California.
- (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) Each 1974 or newer diesel powered heavy-duty vehicle in the R & F Disposal Inc. fleet shall comply with the emission control label (ECL) requirements set forth in the CCR, Title 13, Section 2183 (c) within 45 days of this agreement.
- (13) R & F Disposal Inc. 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 R & F Disposal Inc., for the violations alleged above, ARB and R & F Disposal Inc. agree as follows:

SETTLEMENT AGREEMENT AND RELEASE ARB AND R & F DISPOSAL, INC.:

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

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

- (1) Upon execution of this Agreement, R & F Disposal Inc. shall pay a civil penalty of **\$17,000.00** Payment shall be made in check form as described below, and payments shall be made in three monthly payments beginning on **February 12, 2013**.

SETTLEMENT AGREEMENT AND RELEASE ARB AND R & F DISPOSAL INC.:

Payment Due Date:		In the Amount of and Paid to:	
(1)	February 12, 2013	\$5,666.00	paid to Peralta Community College District
(2)	March 14, 2013	\$5,667.00	paid to California Air Pollution Control Fund
(3)	April 15, 2013	\$5,667.00	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, R & F Disposal Inc. 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 R & F Disposal Inc., 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 R & F Disposal Inc., 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 R & F Disposal Inc., its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of R & F Disposal Inc., its subsidiary, or parent company's properties, or if any deposit account or other property of R & F Disposal Inc., its subsidiary, or parent company be attempted to be obtained or held by writ of execution, garnishment, attachment,

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condemnation, levy, forfeiture or other legal process, R & F Disposal Inc., 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 R & F Disposal Inc. 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 R & F Disposal Inc. by ARB arising from the facts described in recital paragraphs 1 – 13 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) R & F Disposal Inc. 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.*
- (6) R & F Disposal Inc. shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (CCDET) class, as described on the ARB webpage at <http://www.arb.ca.gov/enf/hdvip/hdvip.htm>. This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP and the HDVIP.
 - (a) R & F Disposal Inc. 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 R & F Disposal Inc. 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, R & F Disposal Inc. 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) R & F Disposal Inc. 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

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attendees on California's emission regulations and the proper care and maintenance of Exhaust After Treatment Systems (EATS).

- (a) R & F Disposal Inc. shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of EATS 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) If R & F Disposal Inc. uses a contractor for the maintenance of EATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, R & F Disposal Inc. shall obtain proof that the contractor's staff maintaining the EATS device(s) completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by R & F Disposal Inc. to the ARB within six months of the date of this settlement and be maintained with the EATS installation and maintenance records.
- (8) R & F Disposal Inc. shall submit copies of all PSIP compliance records for years 2013 and 2014 to the ARB by January 31 of the following year. Copies shall be addressed to the attention of Allison Spreadborough at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812. The ARB reserves the right to visit any R & F Disposal Inc. fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.
 - (9) R & F Disposal Inc. 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.
 - (10) Each 1974 or newer diesel powered heavy-duty vehicle in the R & F Disposal Inc. fleet shall comply with the emission control label (ECL) requirements set forth in the CCR, Title 13, Section 2183 (c) within 45 days of this agreement.
 - (11) R & F Disposal Inc. shall retrofit solid waste collection vehicles with best available technology within sixty days of this Agreement. R & F Disposal Inc. will keep records of installed diesel control strategies and update the solid waste collection vehicle compliance plan accordingly.
 - (12) R & F Disposal Inc. shall submit an updated compliance plan demonstrating compliance with the Solid Waste Collection Vehicle Rule to Allison Spreadborough at P.O. Box 2815, Sacramento, CA 95812 or electronically at aspreadb@arb.ca.gov within sixty days of this Agreement.
 - (13) Each solid waste collection vehicle shall comply with the label requirements set forth in the title 13 CCR, Section 2021.2(f) (2) within 30 days of this agreement.

- (14) R & F Disposal Inc. 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 this Agreement.
- (15) This Agreement shall apply to and be binding upon R & F Disposal Inc., 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.
- (16) This Agreement constitutes the entire agreement and understanding between ARB and R & F Disposal Inc. concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and R & F Disposal Inc., concerning the subject matter hereof.
- (17) 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.
- (18) 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.
- (19) 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.
- (20) 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.
- (21) Now, therefore, in consideration of the payment by R & F Disposal Inc., in the amount of seventeen thousand dollars (\$17,000), ARB hereby releases R & F Disposal Inc. 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) through (10) above. The undersigned represent that they have the authority to enter into this Agreement.
- (22) 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.

PSIP Violations

The per vehicle penalty for the PSIP violations involved in this case is a maximum of \$500 per vehicle per violation. The penalty obtained for the PSIP violations involved in this case is \$6,000 for six vehicles, or \$500 per vehicle per violation.

SWCV Violations

The per vehicle penalty for the SWCV 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 SWCV violations involved in this case is \$11,000.00 or \$1,000 per vehicle per violation for six trucks for an unspecified number of days.

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 to the PSIP violations is Health and Safety Code section 43016 because R & F Disposal Inc. failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for the years 2011 and 2012 in violation of the PSIP regulation in Title 13, CCR Sections 2190 *et seq.*, for six vehicles. Since the PSIP regulation was adopted pursuant to authority granted in Part 5 of Division 26 of the Health and Safety Code and since there is no specific penalty or fine provided for PSIP violations in Part 5, Health and Safety Code section 43016 is the applicable penalty provision.

The penalty provision being applied for the Solid Waste Collection Vehicle Regulation (CCR, title 13, section 2020 *et seq.*) violations is HSC section 39674. The SWCV rule is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC section 39660, *et seq.* and because R & F Disposal Inc. failed to use best available control technology on three vehicles as required by the Solid Waste Collection Vehicle rule during the years 2004 through 2011, over an unspecified number of days.

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.

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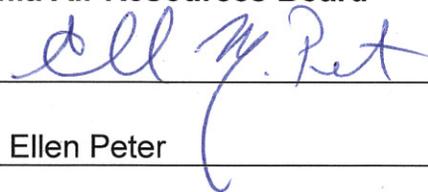
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The provisions cited above do prohibit emissions above a specified opacity or level of g/hp-hr. However, since the hours of operation of the non-compliant units involved and their individual emission rate are not known, it is not practicable to quantify the excess emissions.

- (23) R & F Disposal Inc. acknowledges that ARB has complied with SB 1402 in prosecuting and 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.
- (24) 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.
- (25) The penalty was based on confidential settlement communications between ARB and R & F Disposal Inc. 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 R & F Disposal Inc. and reflects ARB's assessment of the relative strength of its case against R & F Disposal Inc., the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that R & F Disposal Inc. may have secured from its actions.
- (26) Now, therefore, in consideration of the payment by R & F Disposal Inc., in the amount of seventeen thousand dollars (\$17,000), ARB hereby releases R & F Disposal Inc. 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 (13) above. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

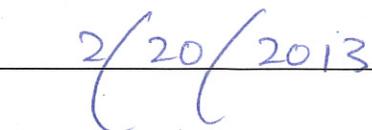
By:



Name: Ellen Peter

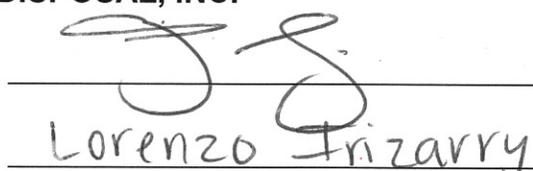
Title: Chief Counsel

Date:



R & F DISPOSAL, INC.

By:



Name: Lorenzo Frizarry

Title: President

Date:

