

15A01765

SETTLEMENT AGREEMENT

This settlement agreement (Agreement) is entered into by and among the California Air Resources Board (ARB) with its principal office at 1001 "I" Street, Sacramento, California 95814, and The Roman Catholic Bishop of San Diego, 3888 Paducah Dr., San Diego, California 92117.

RECITALS

1. California Health and Safety Code section 39658(b)(1) establishes the Asbestos National Emissions Standard for Hazardous Air Pollutants (Asbestos NESHAP) (Title 40, Code of Federal Regulations, section 61.140, et seq.) as an Airborne Toxic Control Measure (ATCM) enforceable by ARB.
2. The ATCM requires owner(s) or operator(s) of demolition or renovation activities to provide written notification of the intention to demolish or renovate a regulated facility ten (10) working days before work begins. (40 C.F.R. 61.145(b))
3. On March 17, 2015, ARB inspected the demolition of four residential structures in El Centro, California, owned by The Roman Catholic Bishop of San Diego. These are regulated facilities under the ATCM.
4. The ATCM defines "Owner or operator of a demolition or renovation activity" as "any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both." (40 C.F.R. 61.141)
5. The Roman Catholic Bishop of San Diego is an "Owner or operator of a demolition or renovation activity" under the ATCM, with respect to the demolition of the residential structures.
6. The Roman Catholic Bishop of San Diego failed to submit the required Asbestos NESHAP notification to ARB.
7. The Roman Catholic Bishop of San Diego admits the facts identified in paragraph 1 through 6 above.
8. Based on the facts set out in the recitals above, on June 4, 2015, ARB issued a Notice of Violation, NOV# ASB-2015-79, to The Roman Catholic Bishop of San Diego for failing to properly notify U.S. EPA and/or ARB at least 10 working days

15A01765

before beginning the demolition of the four residential structures, as required by the ATCM.

9. Violation of the ATCM is a violation of State law resulting in penalties. Health and Safety Code sections 39674 authorizes strict liability penalties not to exceed ten thousand dollars (\$10,000) per day, for each day that the violation occurs.
10. ARB and The Roman Catholic Bishop of San Diego desire to resolve this matter completely under the terms of this Agreement, in lieu of litigation. In order to resolve these violations, The Roman Catholic Bishop of San Diego agrees to take the actions enumerated below under the "TERMS AND CONDITIONS."

TERMS AND CONDITIONS

In consideration of ARB not filing a legal action against The Roman Catholic Bishop of San Diego, for the alleged violation referred to above, ARB and the Roman Catholic Bishop of San Diego agree as follows:

11. Upon execution of this Agreement, The Roman Catholic Bishop of San Diego agrees to pay civil penalties in the total amount of TEN THOUSAND DOLLARS (\$10,000). Full payment shall be made in accordance with the instructions in Attachment A to this agreement. The Roman Catholic Bishop of San Diego shall sign and return original copies of the Agreement concurrently with payment, no later than October 01, 2015.
12. The Roman Catholic Bishop of San Diego shall not violate the Asbestos ATCM.
13. Within 60 days of the effective date of this Agreement, The Roman Catholic Bishop of San Diego agrees to correspond in writing with other Catholic dioceses in California, making them aware of the Asbestos NESHAP requirements. The Roman Catholic Bishop of San Diego must provide to ARB a copy of the letter transmitted and a list of the recipients.
14. The effective date of this Agreement shall be the date on which ARB executes the Agreement.
15. This Agreement shall apply to and be binding upon The Roman Catholic Bishop of San Diego and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent organizations, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

15A01765

16. This Agreement constitutes the entire agreement and understanding between ARB and The Roman Catholic Bishop of San Diego concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and The Roman Catholic Bishop of San Diego concerning the subject matter.
17. Failure to comply with any of the terms of this Agreement shall void the agreement and ARB may take enforcement action based on the initial violation and any subsequent violations of 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 jointly by ARB and The Roman Catholic Bishop of San Diego; it will not be interpreted for or against either party on the ground that said party drafted it.
21. **SB1402 Statement.**

Senate Bill 1402 (Dutton, Chapter 413, Statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (Health and Saf. 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 section 42403.

The per unit penalty in this case is a maximum of ten thousand dollars (\$10,000) per violation per day for strict liability violations pursuant to Health and Safety Code section 39674. After considering all factors specified in Health and Safety Code section 42403, the penalty obtained in this case is a total of TEN THOUSAND DOLLARS (\$10,000), or \$1000

15A01765

for each working day that a notification was not submitted in advance of demolition commencement. Asbestos is a toxic air contaminant and violations of the Asbestos ATCM, including violations of this nature, could result in immediate and localized exposure. The notification requirement allows ARB to inspect the project for regulated asbestos containing materials (RACM) not identified or disclosed in the pre-project asbestos inspection and not properly abated prior to demolition. The penalty reflects that ARB has not previously issued Asbestos ATCM notices of violation to The Roman Catholic Bishop of San Diego.

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

The penalty provision is being applied in this case is Health and Safety Code section 39674, because The Roman Catholic Bishop of San Diego failed to comply with the Asbestos ATCM established under Health and Safety Code section 39658(b).

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 practical to do so.

The notification requirement does not reflect an emission limit.

22. The Roman Catholic Bishop of San Diego 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 Health and Safety Code section 42403, 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 not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
23. 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 risks associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.
24. The penalty reflects ARB's assessment of the relative strength of its case against The Roman Catholic Bishop of San Diego, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and

15A01765

remove any unfair advantage that The Roman Catholic Bishop of San Diego may have secured from their actions.

25. Now therefore, in consideration of the payment on behalf of The Roman Catholic Bishop of San Diego to the California Air Resources Board, ARB hereby resolves with The Roman Catholic Bishop of San Diego and their principals, officers, agents, predecessors and successors from any and all claims for the past violations of the ATCM ARB may have based on the circumstances described in the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

SIGNATURES

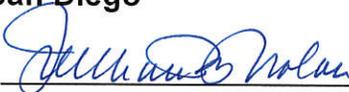
Californian Air Resources Board

By:  _____

Name: Dr. Todd P. Sax
Title: Chief
Enforcement Division

Date: 10/9/15

**The Roman Catholic Bishop
of San Diego**

By:  _____

Name: William Nolan
Title: Director
Office for Civil Affairs

Date: 9/8/15