

## 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 Southwest Transportation Agency (hereinafter "STA"), 16644 South Elm Avenue, Caruthers, CA 93609 (collectively, the "Parties").

### I. RECITALS

- (1) The Verification Procedure for In-Use Strategies to Control Emissions from Diesel Engines ("Verification Procedure," California Code of Regulations (CCR), Title 13, Sections 2700-2710) provides in section 2702 that if the Executive Officer of the ARB grants verification of a diesel emission control strategy, he or she will issue an Executive Order (EO) to the strategy's applicant identifying the verified emission reduction level and any conditions that must be met for the Diesel Emission Control Strategy (DECS) to function properly. The Verification Procedure itself also places conditions on applicants and diesel emissions control strategies.
- (2) The EO covering the Cleaire Horizon Diesel Particulate Filter requires that no changes are permitted to the device. The ARB must be notified in writing of any changes to any part of the Horizon Diesel Particulate Filter. Any changes to the device must be evaluated and approved by ARB. Failure to do so shall invalidate this EO.
- (3) California Vehicle Code (VC) Section 27156 (b) states that no person shall operate or leave standing upon a highway a motor vehicle that is required to be equipped with a motor vehicle pollution control device under Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code or any other certified motor vehicle pollution control device required by any other state law or any rule or regulation adopted pursuant to that law, or required to be equipped with a motor vehicle pollution control device pursuant to the National Emission Standards Act (42 U.S.C. Secs. 7521 to 7550, inclusive) and the standards and regulations adopted pursuant to that federal act, unless the motor vehicle is equipped with the required motor vehicle pollution control device that is correctly installed and in operating condition. No person shall disconnect, modify, or alter any such required device.
- (4) VC Section 27156 (c) provides that no person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system. An exemption from VC Section 27156 is required before any add-on or modified part can be legally advertised, offered for sale, sold or installed in California. Aftermarket parts exemptions are regulated under

CCR, Title 13, Sections 1900 et seq., 2030-2031, 2047-2048, 2200-2207 and 2220-2225 (Aftermarket Parts Regulations).

- (5) If a DECS or the application it is used in does not meet the conditions specified in the Verification Procedure or the applicable EO, it is a violation of the Verification Procedure, and the DECS is not verified for that application, rendering it an illegal, non-exempt add-on part.
- (6) The ARB Enforcement Division staff, with the cooperation of STA, has alleged certain violations of the Verification Procedure, the applicable EO, the Aftermarket Parts Regulations and of VC Section 27156 with respect to Cleaire Horizon DECS in California that do not conform to the conditions specified in the Verification Procedure and the applicable EO. In particular, these alleged violations involve modifying the Cleaire Horizon Diesel Particulate Filters installed on school buses owned by STA.
- (7) Health and Safety Code (H & SC), 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) or not to exceed ten thousand dollars (\$10,000) respectively, for each day in which the violation occurs.
- (8) 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).
- (9) 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.
- (10) 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 which operate on the streets or highways within the State of California.
- (11) 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 which 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.

- (12) 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."
- (13) 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."
- (14) The ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.
- (15) ARB contends that STA failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for 2009 in violation of Title 13, CCR Sections 2190 et seq.
- (16) Title 13, CCR section 2183 (c) states, "No 1974 or newer diesel powered heavy-duty commercial vehicle shall operate in California without evidence that, at the time of manufacture, the installed engine met emission standards at least as stringent as applicable federal emission standards for the model year of the engine. The ARB shall base its determination on whether an engine meets the above requirements by inspecting the Emission Control Label (ECL) affixed to the vehicle's engine."
- (17) Title 13, CCR section 2185 (a) (2) (B) states that after the first year from the effective date of the amended regulation, February 15, 2007, the owner shall receive a citation assessing the owner a \$300 penalty.
- (18) ARB contends that it has documented violations of the ECL Program.
- (19) ARB contends that if the facts described in recital paragraphs (1) – (18) were proven civil penalties could be imposed against STA, as provided in H&SC sections 39674 and 43016 and title 13, CCR section 2185 (a) (2) (B). STA denies all contentions and alleged violations and maintains that it has not committed or engaged in any violations as described herein. Notwithstanding the foregoing, and without any admission of liability or to the alleged violations, STA agrees to the "TERMS AND CONDITIONS" below.

- (20) The ARB accepts this Agreement in termination and settlement of this matter.
- (21) In consideration of the foregoing, and of the promises and statements 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, the ARB and STA agree as follows:

## II. TERMS AND CONDITIONS

In consideration of the ARB not filing a legal action against STA for the alleged violations, and STA's consideration not to litigate the matters described above, the ARB and STA agree as follows:

- (1) The proposed penalty of seventy one thousand and seven hundred dollars (\$71,700) is hereby suspended, because it would, inter alia, cause severe financial hardship to the school districts under contract with STA.
- (2) STA agrees not to violate any provision of the VC Section 27156.
- (3) STA agrees not to violate Aftermarket parts exemption procedures established in CCR, Title 13, Sections 1900 et seq., 2030-2031, 2047-2048, 2200-2207 and 2220-2225.
- (4) STA agrees not to violate the Verification Procedure (CCR, Title 13, Sections 2700-2710) or any EOs issued by ARB.
- (5) STA agrees not to violate truck and bus regulation requirements set forth in CCR, title 13, section 2025.
- (6) STA agrees not to violate the system labeling requirements set forth in CCR, Title 13, Section 2706 (j).
- (7) STA 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 this Agreement.
- (8) Each 1974 or newer diesel powered heavy-duty commercial vehicle in the STA 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.
- (9) STA shall instruct all employees who operate diesel fueled commercial vehicles to comply with the idling regulations set forth in CCR, Title 13, Section 2485, within 45 days of the execution of this Agreement.

- (10) STA agrees not to violate requirements of airborne toxic control measure to limit school bus idling and idling at schools set forth in CCR, title 13, section 2480.
- (11) STA agrees not to violate H & SC Sections 43701 et seq. and 44011.6 et seq., Title 13, CCR, Sections 2180 et seq., 2190 et seq., and 2485 et seq.
- (12) STA shall provide copies of all PSIP compliance records for the 2012 and 2013 to ARB by January 31 of the following year. Copies shall be addressed to the attention of Mr. Tajinder Gill, Air Resources Engineer, ARB Enforcement Division, 9480 Telstar Avenue, Suite 4, El Monte, CA 91731. The ARB reserves the right to visit any STA fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.
- (13) STA 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/hdvp/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) STA 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 one year 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 STA 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, STA shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET course within the past four years. This proof of CCDET completion shall be provided to ARB with PSIP records as required by this Agreement and be maintained with the annual PSIP records.
- (14) STA 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/hdvp/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 exhaust after treatment systems (EATS).

- (a) STA 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 one year 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 STA uses a contractor for the maintenance of EATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, STA 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 STA to the ARB within one year of the date of this settlement and be maintained with the EATS installation and maintenance records.
- (15) STA must maintain the retrofits in good operating condition on all buses (the "buses") it uses for transportation after approval of the Agreement by the Parties, which are equipped with Horizon Filters (the "DPFs"), for five years from the approval date of this Agreement. In addition to fulfilling the other provisions of this Agreement, STA shall, at a minimum:
- (a) Repair the buses' engines (i.e., replace injectors) to ensure that engine-out opacity readings do not exceed 15% and that the engines do not consume oil in excess of manufacturer specifications.
  - (b) Take engine-out and DPF-out opacities readings whenever the DPF is removed for cleaning, and at a minimum annually, for each bus in operation.
  - (c) Ensure that no oil or additives are in the fuel used in the buses.
  - (d) Maintain records of each time engine oil is added or changed.
  - (e) Clean a bus's DPF (utilizing the fleet's in-house Cleaire DPF cleaning machine) whenever the bus's engine burns 20 quarts of oil, regardless of accumulated mileage or elapsed time. This includes ensuring that when a DPF is being cleaned that the cycle is not interrupted and ensuring that all maintenance personnel is properly trained in removing and cleaning the DPF.

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- (f) When it cleans a bus's DPF, STA shall inspect the filter maintain records of any visual signs of damage (i.e., burned cells, endcone soot, etc.).
  - (g) STA agrees to clean the DPF as required by the DPF manufacturer and owner's manual. Maintain records of any maintenance that is done to each bus or DPF.
  - (h) Report quarterly, on a calendar year basis, to ARB any problems STA is experiencing with the buses or DPFs such as filter plugging, short regeneration times, engine power loss etc.
  - (i) Train bus drivers to monitor DPF warning lights and promptly report illuminated warning lights to the appropriate maintenance personnel.
  - (j) Submit reports of (a)-(i) to ARB on a quarterly basis, including copies of the records maintained under (a)-(i). Reports required above must be addressed to the attention of Ms. Sharon Lemieux, Tajinder Gill, Air Resources Engineer, ARB Enforcement Division, 9480 Telstar Avenue, Suite 4, El Monte, CA 91731.
- (16) 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.
- (17) 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.
- (18) 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.
- (19) 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.
- (20) The ARB hereby releases STA and its principals, officers, agents, predecessors and successors from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs (1) –

(18) above. Except as set forth in this release and any statutory requirements imposed on STA under applicable law, the terms and conditions of the Agreement shall terminate five years from ratification ("approval date") by the ARB and the STA. The undersigned, by their signatures below, represent they have the authority to enter into this Agreement.

**California Air Resources Board**

By:   
Name: Ellen M. Peter  
Title: Chief Counsel  
Date: 10/16/2012

**Southwest Transportation Agency**

By:   
Name: Tony Mendes  
Title: Agency Director  
Date: 10-8-12