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 TIM KEMPER (hereinafter "Kemper"), P.O Box 2226, Livermore, California, 94551.

I. RECITALS

(1) Health and Safety Code, Sections 39650-39675 (HSC §§ 39650-39675) mandates the reduction of the emissions of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the ARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant TAC. In-use On-Road diesel vehicles are powered by diesel fueled engines that emit toxic PM. On-Road vehicles are controlled under section 13 CCR § 2025.

(2) 13 CCR § 2025(r) sets forth the requirements for reporting all vehicles with engines subject to the regulation if the owner of a fleet has elected to utilize the compliance options of §§ 2025(f)(4), 2025(g)(3), 2025(g)(4), 2025(h), 2025(i), the credits of § 2025(j), and the agricultural provisions of § 2025(m), single-engine and two-engine street sweeper provisions of § 2025(n), extension or exemptions for vehicles used exclusively in NOx exempt areas of § 2025(p)(1), and the extension for low-mileage construction trucks of § 2025(p)(2).

(3) Kemper has elected to utilize the compliance options/credits/provisions of 13 CCR § 2025(p)(2).

(4) Failure to comply with the requirements of 13 CCR § 2025 is a violation of state law resulting in penalties. California HSC sections 39674(a) and (b) authorize civil penalties for the violation of the programs for the regulation of TACS not to exceed one thousand dollars ($1,000) or ten thousand dollars ($10,000), respectively, for each day in which the violation occurs.

(5) 13 CCR § 2025(e)(8) states: "All information specified in section 2025(r) must be reported to the Executive Officer.

(6) ARB has documented that Kemper has failed to timely report all required information for the vehicle for which the owner has elected to utilize the compliance options/credits/provisions of 13 CCR § 2025(p)(2).

(7) In order to resolve this alleged violation, Kemper has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, ARB accepts this Agreement in termination and settlement of this matter.

(8) 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 violation, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and Kemper agree as follows:

II. TERMS AND RELEASE

In consideration of ARB not filing a legal action against Kemper for the alleged violation referred to above, and Kemper's payment of the penalties set forth in Section 1 below, ARB and Kemper agree as follows:

(1) Upon execution of this Agreement, the sum of three hundred seventy five dollars ($375.00) shall be paid on behalf of Kemper no later than September 22, 2014, as follows:

- $281.00 to the **Air Pollution Control Fund**
- $94.00 to the **Peralta Colleges Foundation**

Please submit the signed Settlement Agreement and the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) no later than September 22, 2014 to:

California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, CA 95812

Please submit all other documents required by this Settlement Agreement to:

Mr. Eric Bissinger
Air Pollution Specialist
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

(2) If the Attorney General files a civil action to enforce this settlement agreement, Kemper shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.

(3) 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 Kemper 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 Kemper through by ARB arising from the facts described in recital paragraphs

(1) through (8) 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.

(4) Kemper shall not violate 44011.6 *et seq.*, 13 CCR §§ 2180 *et seq.*, and 2485 *et seq*.

(5) Kemper shall not violate the Truck & Bus regulation as codified in 13 CCR § 2025 *et seq.*

(6) Kemper shall comply with the Emission Control Label regulation as codified in 13 CCR § 2183.

(7) This Agreement shall apply to and be binding upon Kemper, 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.

(8) This Agreement constitutes the entire agreement and understanding between ARB and Kemper concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Kemper concerning the subject matter hereof.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (HSC § 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 HSC §§42403 and 43024.

Truck and Bus Violation

The per unit penalty for the Truck and Bus violation involved in this case is a maximum of $1,000 per vehicle per day for strict liability violation or $10,000 per vehicle per day for negligent or intentional violation.

The penalty obtained for the Truck and Bus violation involved in this case for failure to timely report all required information for the vehicle is $375 for one vehicle reported after the deadline, or $375 per vehicle, per violation.

The penalty was discounted based on the fact that this was a first time violation and the violator made diligent efforts to comply and to cooperate with the investigation.

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

Truck and Bus Violation

The penalty provision being applied for the Truck and Bus regulation (title 13 CCR, section 2025) violation in this case is HSC § 39674 because the Truck and Bus regulation is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because Kemper failed to timely report all required information for the vehicle for which they have elected to utilize compliance options/credits/provisions as required in 13 CCR, § 2025(r).

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.

Truck and Bus Violation

The provisions cited above do not prohibit emissions above a specified level of g/hp-hr.

(14) Kemper acknowledges that ARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant

facts, including those listed at HSC § 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.

(15) 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 this particular violation. Penalties in future cases might be smaller or larger on a per unit basis.

(16) The penalty was based on confidential settlement communications between ARB and Kemper that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and Kemper and reflects ARB's assessment of the relative strength of its case against Kemper, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Kemper may have secured from its actions.

(17) Now therefore, in consideration of the payment on behalf of Kemper to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases Kemper and their principals, officers, agents, predecessors and successors from any and all claims, ARB may have or have in the future based on the circumstances described in paragraphs (1) through (8) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement

California Air Resources Board		**Tim Kemper**	
Signature:		Signature:	
Print Name:	James R. Ryden	Print Name:	Tim Kemper
Title:	Chief, Enforcement Division	Title:	Owner
Date:	9/23/14	Date:	9/11/14