

## 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 SUNRISE LOGISTICS (hereinafter "SUNRISE LOGISTICS"), 3685 Elkhorn Blvd., Suite 611, North Highlands, California, 95660.

### I. RECITALS

- (1) California Health and Safety Code section 44011.6 (HSC § 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, California Code of Regulations, title 13, sections 2180-2188 (13 CCR §§ 2180-2188).
- (2) HSC § 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 excessive smoke emissions.
- (3) 13 CCR § 2190 *et seq.* were adopted under the authority of HSC § 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) HSC §§ 39650-39675 mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants (TAC). In 1998, following an exhaustive ten-year scientific assessment process, ARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use On-Road diesel vehicles are powered by diesel fueled engines that emit toxic particulate matter. On-Road vehicles are controlled under 13 CCR § 2025.
- (5) 13 CCR § 2025(e)(1)(B) states: "Starting January 1, 2012, for all vehicles with GVWR greater than 26,000 lbs, excluding school buses, fleets must meet the requirements of 13 CCR § 2025(g) or fleets that report may instead comply with the phase-in option of 13 CCR § 2025(i)."
- (6) SUNRISE LOGISTICS has elected to meet the requirements of the Engine Model Year Compliance Schedule provided for in 13 CCR § 2025(g).
- (7) 13 CCR § 2025(g) requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs. meet PM BACT requirements for all 2000 through 2004 engine model years by January 1, 2013, and 2005 through 2006 by January 1, 2014.

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- (8) Title 13 CCR, section 2025(e)(8) states: "All information specified in section 2025(r) must be reported to the Executive Officer."
- (9) ARB has documented that SUNRISE LOGISTICS failed to meet PM BACT requirements for all 2000 through 2004 engine model years by January 1, 2013; and 2005 through 2006 by January 1, 2014.
- (10) Failure to comply with the requirements of 13 CCR § 2025 is a violation of state law resulting in penalties. HSC §§ 39674(a) and (b) authorize civil penalties for the violation of the programs for the regulation of IACs not to exceed one thousand dollars (\$1,000) or ten thousand dollars (\$10,000), respectively, for each day in which the violation occurs.
- (11) The ARB has documented that SUNRISE LOGISTICS has failed to report all required information for all vehicles in the fleet for which the owner has elected to utilize the compliance options/credits/provisions of title 13 CCR, section 2025(h).
- (12) In order to resolve these alleged violations, SUNRISE LOGISTICS has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, ARB accepts this Agreement in termination and settlement of this matter.
- (13) 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 violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and SUNRISE LOGISTICS agree as follows:

**II. TERMS AND RELEASE**

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

- (1) Upon execution of this Agreement, the sum of six thousand dollars (\$6,000.00) shall be paid on behalf of SUNRISE LOGISTICS in 12 monthly payments. The first payment is due no later than April 6, 2015, as follows:

**\$ 500.00** payable on **April 6, 2015** to the **Peralta Colleges Foundation**  
**\$ 500.00** payable on **May 5, 2015** to the **Peralta Colleges Foundation**  
**\$ 500.00** payable on **June 5, 2015** to the **Peralta Colleges Foundation**  
**\$ 500.00** payable on **July 7, 2015** to the **Air Pollution Control Fund**  
**\$ 500.00** payable on **August 5, 2015** to the **Air Pollution Control Fund**  
**\$ 500.00** payable on **September 7, 2015** to the **Air Pollution Control Fund**  
**\$ 500.00** payable on **October 5, 2015** to the **Air Pollution Control Fund**

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- \$ 500.00 payable on **November 9, 2015** to the **Air Pollution Control Fund**
- \$ 500.00 payable on **December 7, 2015** to the **Air Pollution Control Fund**
- \$ 500.00 payable on **January 5, 2016** to the **Air Pollution Control Fund**
- \$ 500.00 payable on **February 5, 2016** to the **Air Pollution Control Fund**
- \$ 500.00 payable on **March 4, 2016** to the **Air Pollution Control Fund**

**Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:**

**Ms. Ann M. Stacy  
Air Pollution Specialist  
California Air Resources Board  
Enforcement Division  
P.O. Box 2815  
Sacramento, CA 95812**

**Please submit the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:**

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

- (2) If the Attorney General files a civil action to enforce this settlement agreement, SUNRISE LOGISTICS 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 SUNRISE LOGISTICS 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 SUNRISE LOGISTICS through by ARB arising from the facts described in recital paragraphs (1) through (12) 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) SUNRISE LOGISTICS shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (5) SUNRISE LOGISTICS shall comply with one or both of the following options to attend the CCDET II class (Diesel Exhaust After Treatment and Maintenance),

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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 diesel exhaust after-treatment systems (DEATS).

- (a) SUNRISE LOGISTICS shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of DEATS 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) In case SUNRISE LOGISTICS uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, SUNRISE LOGISTICS shall obtain proof that the contractor's staff maintaining the DEATS device(s) completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by SUNRISE LOGISTICS to ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.
- (6) SUNRISE LOGISTICS shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to ARB within 45 days of this agreement.
  - (7) Each 1974 or newer diesel powered heavy-duty vehicle in SUNRISE LOGISTICS's fleet shall comply with the ECL regulation as codified in 13 CCR § 2183. Within 45 days of the execution of this Agreement, SUNRISE LOGISTICS shall **submit the proof of compliance to Ms. Ann M. Stacy, Air Pollution Specialist, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812.**
  - (8) SUNRISE LOGISTICS shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in 13 CCR § 2485, within 45 days of this Agreement.
  - (9) SUNRISE LOGISTICS shall not violate the Truck & Bus regulation as codified in 13 CCR § 2025 *et seq.*
  - (10) SUNRISE LOGISTICS shall submit proof of compliance with the Truck and Bus regulation (as codified in 13 CCR § 2025), within 45 days of the execution of this Agreement, to **Ms. Ann M. Stacy, Air Pollution Specialist, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812.**
  - (11) This Agreement shall apply to and be binding upon SUNRISE LOGISTICS, and its officers, directors, receivers, trustees, employees, successors and assignees,

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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.

- (12) This Agreement constitutes the entire agreement and understanding between ARB and SUNRISE LOGISTICS concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and SUNRISE LOGISTICS concerning the subject matter hereof.
- (13) 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.
- (14) 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.
- (15) 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.
- (16) 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.
- (17) 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.

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.

Truck and Bus Violations

The per unit penalty for the Truck and Bus 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.

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The penalty obtained for the Truck and Bus violations involved in this case for failure to meet the requirements of the Engine Model Year Compliance Schedule is (1) vehicle with a 2000 through 2004 model year engine (12 months in violation) and \$500.00 per month.

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

Truck and Bus Violations

The penalty provision being applied for the Truck and Bus regulation (13 CCR § 2025) violations 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 SUNRISE LOGISTICS failed to bring their diesel fleet into compliance by the deadlines set forth in 13 CCR § 2025(g).

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

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

- (18) SUNRISE LOGISTICS 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.

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- (19) 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. Penalties in future cases might be smaller or larger on a per unit basis.
- (20) The penalty was based on confidential settlement communications between ARB and SUNRISE LOGISTICS that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and SUNRISE LOGISTICS and reflects ARB's assessment of the relative strength of its case against SUNRISE LOGISTICS, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that SUNRISE LOGISTICS may have secured from its actions.
- (21) Now therefore, in consideration of the payment on behalf of SUNRISE LOGISTICS to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases SUNRISE LOGISTICS and their principals, officers, agents, predecessors and successors from any and all claims, the ARB may have or have in the future based on the circumstances described in paragraph (1) through (12) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement

**California Air Resources Board**


Signature: 

Print Name: James R. Ryden

Title: Chief, Enforcement

Date: 10/1/15

**SUNRISE LOGISTICS**

Signature: 

Print Name: Valerie Rambert

Title: Owner

Date: 7/31/15