

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB") 1001 I Street, Sacramento, California 95814, and DURHAM SCHOOL SERVICES, LP (hereinafter "DURHAM"), 2610 Navistar Drive, Lisle, Illinois 60532.

I. RECITALS

- (1) California Health and Safety Code section 39650-39675 (HSC §§ 39650-39675) mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive ten-year scientific assessment process, CARB 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 PM. On-road vehicles are controlled under the Truck and Bus regulation, as codified in 13 CCR § 2025.
- (2) 13 CCR § 2025(e)(2) states: "Beginning January 1, 2012, fleets with school buses must comply with the requirements of 13 CCR § 2025(k) for all school buses in the fleet."
- (3) 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 toxic air contaminants not to exceed one thousand dollars (\$1,000) or ten thousand dollars (\$10,000), respectively, for each day in which the violation occurs.
- (4) DURHAM has a fleet containing school buses.
- (5) 13 CCR § 2025(k) requires that owners of school buses with a GVWR greater than 14,000 lbs. meet the PM Best Available Control Technology (BACT) requirements by phasing in 100 percent of the owner's school bus fleet by January 1, 2014.
- (6) CARB has documented that DURHAM failed to phase in 100 percent of its school buses by January 1, 2014.
- (7) In order to resolve these alleged violations, DURHAM has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, CARB 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 alleged violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, CARB and DURHAM agree as follows:

SETTLEMENT AGREEMENT AND RELEASE

CARB and DURHAM

Page 2 of 7

II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against DURHAM for the alleged violations referred to above in recitals (1) through (6), and DURHAM's payment of the penalties and funding of the Supplemental Environmental Project (SEP) set forth below, CARB and DURHAM agree as follows:

- (1) DURHAM has agreed to undertake a SEP as described in *Attachment B – Supplemental Environmental Project Agreement – Placer County Community Based SEP*, ("SEP Agreement"), to offset a portion of the penalty, consistent with CARB's SEP Policy. Pursuant to this Agreement, DURHAM shall make payments according to the schedule below.
- (2) DURHAM has agreed that by funding the Placer County Community Based SEP, it will not receive any direct or indirect financial benefit, and that whenever it publicizes the SEP or the results of the SEP, it will state in a prominent manner that the SEP is being undertaken as part of a settlement of with CARB.
- (3) Upon agreeing to the terms set forth in the SEP Agreement, and funding the Placer County Community Based SEP, DURHAM is released of all liabilities as they relate to the Placer County Community Based SEP as reflected in this underlying Settlement Agreement.
- (4) If the SEP is not fully implemented in accordance with the terms of the SEP Agreement, CARB (as the third party beneficiary) is entitled to recover the full amount of the SEP from the SEP implementer, less any amount waived based on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, DURHAM assigns any and all rights against the SEP implementer to CARB in the event of a breach of this SEP Agreement. DURHAM shall not be liable to CARB or any other third party for the SEP Implementer's breach of the SEP Agreement.
- (5) Upon execution of this Agreement, Durham shall pay a civil penalty and fund Placer County Community Based SEP, each in the amount of sixty four thousand five hundred dollars (\$64,500.00). Payment shall be made in two payments as described below, due January 22, 2019:
 - \$64,500 payable to the **Air Pollution Control Fund**
 - \$64,500 Payable to the **Placer County Community Based SEP**

The signed Settlement Agreement Release and any future mailings or documents per the terms of this Agreement shall be mailed to:

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

For payments made to the Air Pollution Control Fund, please send 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, California 95812-1436

For payments made to the Placer County Community Based SEP, please send the payment along with the attached *Supplemental Environmental Project Payment Transmittal Form (Attachment A-2)* to:

Placer County Air Pollution Control District
For: Placer County Community Based SEP
110 Maple Street
Auburn, California 95603

In addition, a copy of each payment check made to Placer County Air Pollution Control District shall be mailed to:

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

- (6) Effect of Untimely Payment. If any payment is more than fifteen (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 Agreement, DURHAM shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (7) If the Attorney General files a civil action to enforce this settlement agreement, DURHAM shall pay all reasonable costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.

SETTLEMENT AGREEMENT AND RELEASE

CARB and DURHAM

Page 4 of 7

- (8) 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 DURHAM for violations of state environmental statutes, and these penalties are payable to and for the benefit of CARB, a governmental unit. Therefore, it is agreed that these penalties imposed on DURHAM by CARB arising from the facts described in recital paragraphs (1) through (6) 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.
- (9) DURHAM shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (10) DURHAM shall remain in compliance with the Emission Control Label regulation as codified in 13 CCR § 2183.
- (11) DURHAM shall remain in compliance with the Periodic Smoke Inspection Program as codified in 13 CCR §§ 2180-2194.
- (12) DURHAM 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.
- (13) DURHAM shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025.
- (14) This Agreement shall apply to and be binding upon DURHAM, and its officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (15) This Agreement constitutes the entire agreement and understanding between CARB and DURHAM concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between CARB and DURHAM concerning the subject matter hereof.
- (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.

SETTLEMENT AGREEMENT AND RELEASE

CARB and DURHAM

Page 5 of 7

- (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) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires CARB to provide information on the basis for the penalties it seeks (HSC § 39619.7). This information, which is provided throughout this 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 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.

The penalty obtained for the Truck and Bus violations involved in this case for failure to meet the requirements of the school bus compliance schedule is \$129,000.00 or \$2,150.00 per vehicle per violation for 60 buses.

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 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 an Airborne Toxic Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because DURHAM failed

SETTLEMENT AGREEMENT AND RELEASE

CARB and DURHAM

Page 6 of 7

to bring their diesel fleet into full compliance by the deadlines set forth in 13 CCR § 2025(k).

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 noncompliant buses involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (21) 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.
- (22) The penalty was based on confidential settlement communications between CARB and DURHAM that CARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between CARB and DURHAM and reflects CARB's assessment of the relative strength of its case against DURHAM, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that DURHAM may have secured from its actions.
- (23) Now therefore, in consideration of the payment on behalf of DURHAM to the Air Pollution Control Fund and the Placer County Community Based Supplemental Environmental Project, CARB hereby releases DURHAM and its principals, officers, agents, predecessors and successors from any and all claims CARB may have or have in the future based on the circumstances described in paragraphs (1) through (6) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

SETTLEMENT AGREEMENT AND RELEASE
CARB and DURHAM
Page 7 of 7

California Air Resources Board

Signature: 

Print Name: Richard W. Corey

Title: Executive Officer

Date: 2/7/2019

Durham School Services, LP

Signature: 

Print Name: Dorothy Capers

Title: General Counsel

Date: 1-16-19