

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 CALIFORNIA TRANSPORT REFRIGERATION, INC. (hereinafter "CTRI"), 1125 S. Greenwood Avenue, Montebello, California 90640.

I. RECITALS

- (1) The Verification Procedure, Warranty, and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines ("Verification Procedure"), as codified in California Code of Regulations, title 13, sections 2700-2711 (13 CCR §§ 2700-2711), provides in § 2702 that if the Executive Officer of 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 Verification Procedure provides in § 2706(q) that "No person or entity shall advertise, sell, lease, supply, offer for sale, represent, or install any device, apparatus, mechanism, or fuel based system as a verified DECS for or on any engine, vehicle or equipment that does not meet the terms and conditions of the strategy's EO. The applicant, distributor, and/or installer must ensure that each verified DECS is supplied, sold, leased, and installed pursuant to the provisions of the EO." Similarly, the Verification Procedure provides in § 2711(a) that "No person shall sell, offer to sell, or introduce into commerce an ARB verified DECS unless all of the conditions of the governing EO and this Chapter are met."
- (3) The Verification Procedure provides in § 2706(t) that "The applicant or authorized installer (i.e., the party conducting the pre-installation compatibility assessment) must be able to demonstrate, to the satisfaction of the Executive Officer, that a candidate engine being considered for retrofit is compatible with the verified DECS by ensuring that each candidate engine meets all the terms and conditions of the EO prior to installation." The Verification Procedure also provides in § 2706(u) requirements for installers of DECS.
- (4) The EO "DE-08-001-05", issued by ARB to Proventia Emission Control Oy for the Proventia FTF and Proventia Bobtail FTF DECS (family name CA/PEC/2008/PM2+/N00/OF/FTF01), provides the terms and conditions that the verification is subject to, as well as a list of ARB-approved Engine Family Names in its attachment.

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- (5) The installation of a DECS on an engine that is not approved in the applicable EO is a violation of the Verification Procedure, and the DECS is not verified for the applications specified in the applicable EO.
- (6) Health and Safety Code (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.
- (7) ARB staff has alleged certain violation of the Verification Procedure and the applicable EO, with respect to a Proventia DECS that does not conform to the conditions specified in the Verification Procedure and the applicable EO. In particular, CTRI failed to ensure that a DECS with DECS family name CA/PEC/2008/PM2+/N00/OF/FTF01 was installed on an engine approved in the applicable EO (DE-08-001-05).
- (8) In order to resolve these alleged violations, CTRI has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, ARB accepts this Agreement in termination and settlement of this matter.
- (9) 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 CTRI agree as follows:

II. TERMS AND RELEASE

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

- (1) Upon execution of this Agreement, the sum of one thousand five hundred dollars (\$1,500.00) shall be paid on behalf of CTRI no later than **June 8, 2015**, as follows:
 - \$1,125.00 payable to the **Air Pollution Control Fund**
 - \$375.00 payable to the **Peralta Colleges Foundation**

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

**Mr. Xiangyi Li, Ph.D., P.E.
Air Resources Engineer
California Air Resources Board
Enforcement Division
9480 Telstar Avenue Suite 4
El Monte, California 91731**

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, California 95812-1436**

- (2) If the Attorney General files a civil action to enforce this settlement agreement, CTRI 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 CTRI 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 CTRI through by ARB arising from the facts described in recital paragraphs (1) through (7) 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) CTRI shall not violate Aftermarket parts exemption procedures established in 13 CCR §§ 1900 et seq., 2030-2031, 2047-2048, 2200-2207 and 2220-2225.
- (5) CTRI shall not violate the Verification Procedure (13 CCR §§ 2700-2711) or any EO issued by ARB.
- (6) CTRI shall ensure that the terms and conditions specified in the applicable EO are met prior to installing, selling, offering for sale, or advertising any DECS in California.

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- (7) CTRI shall not violate the system labeling requirements set forth in 13 CCR § 2706(j).
- (8) CTRI shall not violate the pre-installation compatibility assessment requirements set forth in 13 CCR § 2706(t).
- (9) CTRI shall not violate the requirements for installers of DECS set forth in 13 CCR § 2706(u).
- (10) CTRI shall comply with the DECS warranty requirements set forth in the 13 CCR § 2707.
- (11) This Agreement shall apply to and be binding upon CTRI, 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.
- (12) This Agreement constitutes the entire agreement and understanding between ARB and CTRI concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and CTRI 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:

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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.

VDECS Violation

The per unit or per vehicle penalty in this case is a maximum of \$1,000 per unit per day for strict liability violation and \$10,000 per unit per day for negligent or intentional violation. The total penalty in this case is \$1,500 for one non-compliant unit for a per unit penalty of \$1,500 over an unspecified number of days of violation. This penalty was calculated by considering all factors specified in HSC § 43024, including the fact that this is an unintentional violation that CTRI corrected while cooperating with the investigation.

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

VDECS Violation

The penalty provision being applied in this case is HSC § 39674 because CTRI failed to comply with the Verification Procedure, 13 CCR §§ 2700-2711, which was adopted under authority of HSC § 39600, et seq.

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.

VDECS Violation

The provisions cited above do prohibit emissions above a specified level. However, since the hours of operation of the non-compliant unit involved and its individual emission rate are not known, it is not practicable to quantify the excess emissions.

- (18) CTRI 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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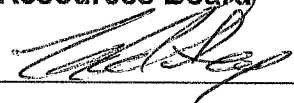
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- (19) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration 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 CTRI that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and CTRI and reflects ARB's assessment of the relative strength of its case against CTRI, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that CTRI may have secured from its actions.
- (21) Now therefore, in consideration of the payment on behalf of CTRI to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases CTRI 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 paragraphs (1) through (7) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Signature:



Print Name: Dr. Todd P. Sax

Title: Chief, Enforcement Division

Date:

7/10/15

California Transport Refrigeration, Inc.

Signature:



Print Name:

CRAIG BURTON

Title:

SALES MANAGER

Date:

6/08/2015