

## 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 H&H General Contractors Incorporated (hereinafter "HHGC"), 7919 Palm Avenue, Highland, California 92346.

### I. RECITALS

- (1) California Health and Safety Code sections 39650-39675 (HSC §§ 39650-39675) mandate the reduction of the emission of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive 10-year scientific assessment process, ARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use off-road heavy duty diesel vehicles (off-road vehicles) are powered by diesel fueled engines that emit toxic particulate matter. Off-road vehicles are controlled under chapter 9, California Code of Regulations, title 13, section 2449 (13 CCR § 2449).
- (2) 13 CCR § 2449(b) states except as provided in § 2449(b)(2)(G) this regulation applies to any person, business, or government agency who owns or operates within California any vehicles with a diesel-fueled or alternative diesel fueled off-road compression-ignition engine with maximum power (max hp) of 25 horsepower (hp) or greater provided that the vehicle cannot be registered and driven safely on-road or was not designed to be driven on-road, even if it has been modified so that it can be driven safely on-road.
- (3) 13 CCR § 2449(f) sets forth the requirements for labeling all vehicles with engines subject to the regulation with an ARB-issued equipment identification number (EIN).
- (4) 13 CCR § 2449(g) sets forth the requirements for reporting all vehicles with engines subject to the regulation.
- (5) ARB Enforcement Division, has documented that HHGC failed to report and label its off-road vehicles prior to the August 1, 2009 deadline.
- (6) Failure to report and label off-road vehicles is a violation of state law resulting in penalties. HSC § 39674 authorizes civil or administrative penalties not to exceed one thousand dollars (\$1,000) or ten thousand dollars (\$10,000) for each day that the violation occurs.
- (7) In order to resolve these alleged violations, HHGC has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, ARB accepts this Agreement in termination and settlement of this matter.

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- (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 violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and HHGC agree as follows:

**II. TERMS AND RELEASE**

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

- (1) Upon execution of this Agreement, the sum of fifteen thousand, five hundred dollars (\$9,750.00) shall be paid on behalf of HHGC no later than November 17, 2014, as follows:
- \$7,312.50 to the **Air Pollution Control Fund**
  - \$2,437.50 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. Christopher Patno/Air Resources Engineer  
Air Resources Board, Enforcement Division  
9480 Telstar Avenue, Suite 4  
El Monte, CA 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) **Effect of Untimely Payment.** If any payment is more than 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 settlement agreement, HHGC shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees and costs.
- (3) It is further agreed that the penalties described in "Terms and Release", paragraph 1 are punitive in nature, rather than compensatory.

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Furthermore, the penalty is intended to deter and punish HHGC 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 HHGC through by ARB 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.

- (4) HHGC shall not violate HSC sections 43701 *et seq.*, 44011.6 *et seq.*, and title 13 CCR, sections 2183, 2190 *et seq.*, and 2485 *et seq.*
- (5) HHGC shall comply with the requirements for off-road vehicles set forth in 13 CCR § 2449.
- (6) HHGC shall instruct all employees who operate diesel-fueled vehicles to comply with the idling requirements set forth in title 13 CCR, section 2449, within 45 days of this Agreement.
- (7) This Agreement shall apply to and be binding upon HHGC, 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 HHGC concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and HHGC 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 (see Health and Safety Code section 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 sections 42403 and 43024.

Off-Road Vehicle Violations

The per vehicle penalty for the off-road vehicle 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 HHGC violations involved in this case is \$9,750.00 or \$375.00 per vehicle for 26 vehicles for an unspecified number of days.

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.**

Off-Road Vehicle Violations

The penalty provision being applied for the In-Use Off-Road Diesel Vehicle Regulation (Off-Road Regulation, 13 CCR § 2449) violations (including labeling) is HSC § 39674 because the Off-Road Regulation is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because HHGC failed to register and label 26 vehicles as required by the Off-Road Regulation.

**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.**

Off-Road Vehicle Violations

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

- (14) HHGC 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 section 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 these particular violations. 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 HHGC that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and HHGC and reflects ARB's assessment of the relative strength of its case against HHGC, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that HHGC may have secured from its actions.
- (17) Now therefore, in consideration of the payment on behalf of HHGC to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases HHGC 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 (5) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

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California Air Resources Board

H&H General Contractors, Inc.

Signature: 

Signature: 

Print Name: James R. Ryden, Chief

Print Name: Alfred Troy Hodges

Title: Enforcement Division

Title: President

Date: 11/24/14

Date: 11/21/2014