

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 BG'S BIG BOX SERVICE (hereinafter "BG'S"), 12087-50 Lopez Canyon Road, Sylmar, CA 91342.

I. RECITALS

- (1) California Health and Safety Code (*H&SC*) Section 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, Sections 2180-2188, Title 13, California Code of Regulations (CCR).
- (2) *H&SC* Section 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 excess smoke emissions.
- (3) Title 13, CCR sections 2190 et seq. were adopted under the authority of *H&SC* section 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 which operate on the streets or highways within the State of California.
- (4) Title 13, CCR sections 2190 et seq. authorize the Periodic Smoke Inspection Program (PSIP) which requires the owners and operators of California based vehicle fleets of two or more heavy duty diesel motor vehicles with gross vehicle weight ratings greater than 6,000 pounds which operate on the streets or highways within the State of California to conduct annual smoke opacity inspections of their vehicles that are four years older than the model year of the vehicle's engine.
- (5) Title 13, CCR section 2192(a) requires inter alia that the owner of the vehicle "[t]est the vehicle for excessive smoke emissions periodically according to the inspection intervals specified in section 2193(a), (b), and (c)", "[m]easure the smoke emissions for each test...", "[r]ecord the smoke test opacity levels and other required test information as specified in section 2194..." and "[k]eep the records specified in section 2194 for two years after the date of inspection."

- (6) Health and Safety Code, Sections 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 (\$1,000.00) or not to exceed ten thousand dollars (\$10,000.00) respectively, for each day in which the violation occurs.
- (7) Under the authority of Health and Safety Code, Section 39600 and 39601, the CCR, Title 13, Section 2020 et seq. requires the Solid Waste Collection Vehicle fleet owners to use best available control technology for each collection vehicle in the active fleet. Records of the installed diesel emission control strategy and corresponding compliance plan must be accessible at the terminal. Each Solid Waste Collection Vehicle must be affixed to the driver's side doorjamb, or another readily accessible location known to the driver, a legible and durable label with complete and accurate information filled in.
- (8) ARB contends BG'S failed to install Best Available Control Technology to vehicles in its fleet according to the schedule outlined in Title 13, CCR Sections 2021.2, in violation of the Health and Safety Code, Section 39674.
- (9) Title 13, CCR section 2183 (c) states, "No 1974 or newer diesel powered heavy-duty commercial vehicle shall operate in California without evidence that, at the time of manufacture, the installed engine met emission standards at least as stringent as applicable federal emission standards for the model year of the engine. The ARB shall base its determination on whether an engine meets the above requirements by inspecting the Emission Control Label (ECL) affixed to the vehicle's engine."
- (10) Title 13, CCR section 2185 (a) (2) (B) states, "After the first year from the effective date of the amended regulation, February 15, 2007, the owner shall receive a citation assessing the owner a \$300 penalty."
- (11) ARB contends BG'S failed to provide evidence that one of their heavy-duty diesel vehicles had a legible emission control label (ECL) attached to the engine, which is in violation of CCR, title 13, section 2183, et seq.
- (12) BG'S is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation, and therefore agree as follows:

II. TERMS & RELEASE

In consideration of ARB not filing a legal action against BG'S, for the violations alleged above, ARB and BG'S agree as follows:

- (1) Upon execution of this Agreement, BG'S shall pay a civil penalty of \$ 800.00. Payment shall be made in check form as described below:
 - \$ 600.00 to the **California Air Pollution Control Fund.**
 - \$ 200.00 to the **Peralta Community College District.**

All payments and documents shall be sent by January 27, 2012 to the attention of:

Mr. Sidney Lau, Air Resources Engineer
Air Resources Board, Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, CA 91731

- (2) BG'S shall not violate Health and Safety Code Sections 43701 et seq. and 44011.6, et seq., Title 13, CCR, Sections 2180 et seq., 2190 et seq., and 2485 et seq.
- (3) BG'S shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (CCDET) class, as described on the ARB's webpage at <http://www.arb.ca.gov/enf/hdvip/hdvip.htm>. This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP and the HDVIP.
 - (a) BG'S shall have at least one staff member responsible for compliance with the PSIP and the HDVIP attend the CCDET class. Proof of CCDET completion shall be provided to ARB within one year of the date of this Agreement and shall be maintained in each applicable employee's file for the term of his or her employment, or as provided by BG'S rules, regulations, codes, or ordinances, whichever is longer.
 - (b) If BG'S uses a contractor to perform the annual smoke opacity testing required under the PSIP, BG'S shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET course within the past four years. This proof of CCDET completion shall be provided to ARB with PSIP records as required by this Settlement Agreement and shall be maintained with the annual PSIP records.

- (4) BG'S shall comply with one or both of the following options to attend the CCDET II class (Diesel Exhaust After Treatment and Maintenance), 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 Compliance emission regulations and the proper care and maintenance of Verified Diesel Emission Control Strategies (VDECS).
- (a) BG'S shall have at least one staff member responsible for maintenance of VDECS attend the CCDET II class. Proof of CCDET II completion shall be provided to ARB within one year of the date of this Agreement and shall also be maintained in each applicable employee's file for the term of his or her employment, or as provided by BG'S, rules, regulations, codes, or ordinance, whichever is longer.
- (b) In case BG'S uses a contractor for the maintenance of VDECS, BG'S shall obtain proof that the contractor's staff maintaining the VDECS completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by BG'S to the ARB within one year of the date of this settlement and shall also be maintained with VDECS maintenance records.
- (5) BG'S shall complete Low NOx Software Upgrades (reflash) on all applicable heavy duty diesel engines operating in California no later than 45 days after an engine requiring reflash to comply with ARB emission standards is identified or included in its fleet, and return proof to Mr. Sidney Lau, at the address above.
- (6) Each 1974 or newer diesel powered heavy-duty commercial vehicle in BG'S fleet shall comply with the emission control label (ECL) requirements set forth in the CCR, Title 13, Section 2183(c), within 45 days of this agreement.
- (7) BG'S shall retrofit the appropriate number of Solid Waste Collection Vehicles with best available control technology to meet the implementation schedule specified in CCR, title 13, section 2021.2. BG'S shall keep the records of the installed diesel control strategy and update the compliance plan accordingly. BG'S shall affix to each Solid Waste Collection Vehicle a legible and durable label with complete and accurate information filled in. This label shall be affixed to the driver's side doorjamb, or any other readily accessible location known to the driver.

- (8) BG'S shall retrofit with Best Available Control Technology (BACT) or retire 100% of group three (engine model year 2003-2006) by **March 1, 2012**. BG'S shall keep the records of installed diesel control strategy and update the compliance plan accordingly and submit the updated, signed and dated, compliance plan before **March 15, 2012** to Mr. Sidney Lau, ARB, Enforcement Division, 9480 Telstar Avenue, Suite 4, El Monte, CA 91731 or electronically at slau@arb.ca.gov.
- (9) BG'S shall instruct all employees who operate diesel fueled commercial vehicles to comply with the idling regulations set forth in CCR, Title 13, Section 2485, within 45 days of this Agreement.
- (10) This Agreement shall apply to and be binding upon BG'S, 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.
- (11) This Agreement constitutes the entire agreement and understanding between ARB and BG'S, concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and BG'S, concerning the subject matter hereof.
- (12) 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.
- (13) 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.
- (14) 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.
- (15) 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.
- (16) Now, therefore, in consideration of the payment by BG'S, in the amount of eight hundred dollars (\$800.00), ARB hereby releases BG'S and its principals, officers, directors, agents, subsidiaries, predecessors, and successors from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs (1) – (11) above. The

undersigned represent that they have the authority to enter into this Agreement.

- (17) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the 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 Health and Safety Code sections 42403 and 43024.

SWCV Violations

The per vehicle penalty for the SWCV 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 SWCV violations involved in this case is \$500, or \$500 per vehicle for 1 truck for an unspecified number of days. The penalty was discounted based on the fact that this was a first time violation.

ECL Violations

The per vehicle penalty for the labeling violations involved in this case is a maximum of \$300 per vehicle per violation. The penalty obtained for the ECL violations involved in this case is \$300.00 for 1 vehicle, or \$300.00 per violation.

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

SWCV Violations

The penalty provision being applied for the Solid Waste Collection Vehicle Regulation (Title 13, CCR, section 2020 et seq.) violations (including labeling) is Health and Safety Code section 39674 because the SWCV rule is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in Health and Safety Code Sections 39650 – 39675 and because BG'S failed to use best available control technology on 1 vehicle and failed to label 1 vehicle as required by the Solid Waste Collection Vehicle rule, on

vehicles at the BG'S terminal located in Sylmar, during the year 2010 over an unspecified number of days.

ECL Violations

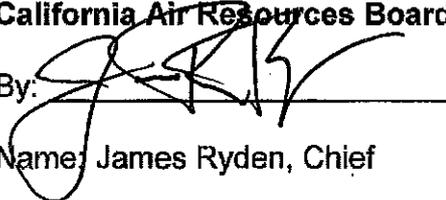
The penalty provision being applied for the ECL Program violations is Title 13, CCR section 2185 (a) (2) (B) because BG'S failed to provide evidence that one of their vehicles had a legible emission control label (ECL) attached to the engine as required by Title 13, CCR section 2183 (c).

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.

The SWCV provisions cited above do prohibit emissions above a specified opacity or 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) BG'S acknowledges that ARB has complied with SB 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.
- (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 consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. The penalty was discounted based on the fact that the SWCV violations were first time violations and the violator made unusually diligent efforts to comply and to cooperate with the investigation. Penalties in further cases might be smaller or larger on a per unit basis.
- (20) The penalty was based on confidential settlement communications between ARB and BG'S that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and BG'S and reflects ARB's assessment of the relative strength of its case against BG'S, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that BG'S may have secured from its actions.

California Air Resources Board

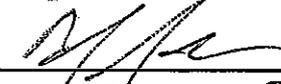
By: 

Name: James Ryden, Chief

Title: Enforcement Division

Date: 4/30/12

BG's Big Box Service

By: 

Name: Bob Goebel

Title: MGR

Date: 4-15-12