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 JAKE'S TOWING AND RECOVERY, INC. (hereinafter "JAKE'S TOWING"), ~~1000 Sunrise Avenue~~, Suite ~~9B-333~~, Roseville, California ~~95661.~~ 95678 801 Riverside Ave # 160

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.* was 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 that 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 that 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) *H&SC* Section 43016 states, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty of not to exceed five hundred dollars ($500.00) per vehicle."

(7) The ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.

(8) Title 13, CCR, section 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 section 2025(g) or fleets that report may instead comply with the phase-in option of section 2025(i)."

(9) Failure to comply with the requirements of title 13, CCR, section 2025 is a violation of state law resulting in penalties. California Health and Safety Code (HSC) 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) or ten thousand dollars ($10,000), respectively, for each day in which the violation occurs.

(10) JAKE'S TOWING has elected to utilize the phase-in option provided for in title 13, CCR, section 2025(i).

(11) Title 13, CCR, section 2025(i)(1), phase-in option, requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs. meet the PM BACT requirements by phasing in 30 percent of their fleet by January 1, 2012.

(12) The ARB has documented that JAKE'S TOWING failed to have 30 percent of their fleet meet the PM BACT requirements by January 1, 2012.

(13) JAKE'S TOWING 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 JAKE'S TOWING, for the Violations alleged above, ARB and JAKE'S TOWING agree as follows:

JAKE'S TOWING shall comply with the Truck and Bus regulation as codified in CCR, title 13, section 2025. Within 30 days of the execution of this Agreement,

JAKE'S TOWING shall submit the proof of compliance to Ms. Wendy Maienknecht, Air Resources Engineer, ARB Enforcement Division, P.O. Box 2815, Sacramento, CA 95812.

JAKE'S TOWING shall not violate the Truck and Bus regulation as codified in title 13, CCR, section 2025.

(1) Upon execution of this Agreement, JAKE'S TOWING shall pay a civil penalty of $750.00. Payment shall be made in check form as described below and the full amount shall be submitted by August 10, 2012.

- **$ 562.50** to the **California Air Pollution Control Fund**
- **$ 187.50** to the **Peralta Community College District**.

All payments and documents shall be sent to the attention of:

Ms. Wendy Maienknecht, Investigator/Air Resources Engineer
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

(2) JAKE'S TOWING 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/hdvip/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 exhaust after treatment systems.

a) JAKE'S TOWING shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of exhaust after treatment systems attends 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 JAKE'S TOWING uses a contractor for the maintenance of exhaust after treatment systems, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, JAKE'S TOWING shall obtain proof that the contractor's staff maintaining the exhaust after treatment device(s) completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by JAKE'S TOWING to the ARB within six months of the date of this settlement and be maintained with the exhaust after treatment systems installation and maintenance records.

(3) JAKE'S TOWING shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to the ARB within 45 days of this agreement.

(4) JAKE'S TOWING shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in CCR, Title 13, Section 2485, within 45 days of this Agreement.

(5) This Agreement shall apply to and be binding upon JAKE'S TOWING, 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.

(6) This Agreement constitutes the entire agreement and understanding between ARB and JAKE'S TOWING, concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and JAKE'S TOWING, concerning the subject matter hereof.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) Now, therefore, in consideration of the payment by JAKE'S TOWING, in the amount of seven hundred and fifty dollars ($750.00), ARB hereby releases JAKE'S TOWING 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) – (12), above. The undersigned represent that they have the authority to enter into this Agreement.

(12) 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.

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 phase-in option is $750.00 or $750.00 per vehicle per violation for 1 truck for an unspecified number of days. The penalty was discounted based on the fact that this was a first time violation.

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 (CCR, title 13, 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 JAKE'S TOWING failed to bring their diesel fleet into compliance by the deadlines set forth in CCR, title 13, section 2025(i)(1).

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.

(13) JAKE'S TOWING acknowledges that ARB has complied with SB 1402 in prosecuting and 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.

(14) 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.

(15) The penalty was based on confidential settlement communications between ARB and JAKE'S TOWING 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 JAKE'S TOWING and reflects ARB's assessment of the relative strength of its case against JAKE'S TOWING, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that JAKE'S TOWING may have secured from its actions.

California Air Resources Board

By: _____

Name: James R. Ryden

Title: Chief, Enforcement Division

Date: 8/21/12

JAKE'S TOWING AND RECOVERY, INC.

By: _____

Name: Patrice Ubil

Title: President

Date: 8/6/12