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 LAKEPORT DISPOSAL COMPANY, INC. (hereinafter "LAKEPORT DISPOSAL"), 1054 North Main Street, Lakeport, 95453.

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) ARB contends LAKEPORT DISPOSAL failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for 2009 and 2010 in violation of Title 13, CCR Sections 2190 et seq.

(9) Under authority of California Health and Safety Code, section 39601 and 39660, Title 13, CCR, Sections 2020 and 2021 *et seq.* requires owners of diesel fueled solid waste collection vehicles over 14,000 pounds gross vehicle weight with model-year engines 1960 to 2006 used to collect solid waste to use best available control technology for each solid waste collection vehicle in the active fleet. Records of the installed diesel emission control strategies and corresponding compliance plan must be accessible at the terminal. Each solid waste collection vehicle must have a legible and durable label with complete and accurate information affixed to the driver's side doorjamb or another readily accessible location known to the driver.

(10) The ARB contends that LAKEPORT DISPOSAL failed to install best available control technology to solid waste collection vehicles in its fleet according to the implementation schedule outlined in Title 13, CCR, Sections 2021 *et seq.* at their terminal in Lakeport, California.

(11) 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.

(12) In order to resolve these alleged violations, LAKEPORT DISPOSAL has taken, or agreed to take, the actions enumerated below under "TERMS AND RELEASE". Further, the ARB accepts this Agreement in termination and settlement of this matter.

(13) 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, the ARB and LAKEPORT DISPOSAL agree as follows:

II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against LAKEPORT DISPOSAL for the alleged violations referred to above, ARB and LAKEPORT DISPOSAL agree as follows:

(1) Upon execution of this Agreement, LAKEPORT DISPOSAL shall pay a civil penalty of eleven thousand dollars ($11,000.00). Payment shall be made in check form as described below

SETTLEMENT AGREEMENT AND RELEASE ARB AND LAKEPORT DISPOSAL:

Payment Due Date:		In the Amount of and Paid to:	
(1)	July 15, 2013	**$2,750.00**	paid to **Peralta Colleges Foundation**
(2)	October 15, 2013	**$2,750.00**	paid to **California Air Pollution Control Fund**
(3)	January 15, 2014	**$2,750.00**	paid to **California Air Pollution Control Fund**
(4)	April 15, 2014	**$2,750.00**	paid to **California Air Pollution Control Fund**

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

Mr. Stephen Binning, Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

(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, LAKEPORT DISPOSAL shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(3) It is agreed that if LAKEPORT DISPOSAL, including its subsidiary or parent company, at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving LAKEPORT DISPOSAL, its subsidiary, or parent company, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against LAKEPORT DISPOSAL, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or

agent is appointed or authorized to take charge of any of LAKEPORT DISPOSAL, its subsidiary, or parent company's properties, or if any deposit account or other property of LAKEPORT DISPOSAL, its subsidiary, or parent company be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, LAKEPORT DISPOSAL, its subsidiary, or parent company takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.

(4) 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 LAKEPORT DISPOSAL 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 LAKEPORT DISPOSAL by ARB arising from the facts described in recital paragraphs 1 – 11 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.

(5) LAKEPORT DISPOSAL shall not violate H&SC sections 43701 *et seq.* and 44011.6 *et seq.* and Title 13, CCR Sections 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*

(6) LAKEPORT DISPOSAL shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (CCDET) class, (SAE J1667 Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles) as described on the ARB 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, ECL, and the HDVIP.

(a) LAKEPORT DISPOSAL shall have the fleet maintenance manager (or equivalent) and all staff performing opacity tests for compliance with PSIP and the HDVIP attend the CCDET I class. Proof of CCDET I completion shall be provided to ARB within six months of the date of this Agreement and be maintained in each applicable employee's file for the term of his or her employment.

(b) If LAKEPORT DISPOSAL uses a contractor to perform the annual smoke opacity testing required under the PSIP, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET I course, LAKEPORT DISPOSAL shall obtain proof that the contractor's staff conducting the smoke

opacity tests completed the CCDET I course within the past four years. This proof of CCDET I completion shall be provided to ARB with PSIP records as required by this Agreement and be maintained with the annual PSIP records.

(7) LAKEPORT DISPOSAL 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 Diesel Exhaust After Treatment Systems (DEATS).

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

(8) Each SWCV shall comply with the label requirements set forth in Title 13, CCR, Section 2021.2(f)(2) within 30 days of this Agreement.

(9) LAKEPORT DISPOSAL shall retrofit solid waste collection vehicles with best available technology according to the implementation plan below:

June 1, 2013	LAKEPORT DISPOSAL **will bring one solid waste vehicle into compliance and provide the following information:** 1. A statement signed by the installer at the time of installation of the VDECS affirming that the installation was performed by an installer authorized by the VDECS manufacturer 2. The name of the company installing the device 3. The date the device was installed 4. Description of VDECS installed 5. VDECS family name

		6. Serial number of installed VDECS
2	**July 1, 2013**	LAKEPORT DISPOSAL **will bring another solid waste vehicle into compliance and provide the following information:** 1. A statement signed by the installer at the time of installation of the VDECS affirming that the installation was performed by an installer authorized by the VDECS manufacturer 2. The name of the company installing the device 3. The date the device was installed 4. Description of VDECS installed 5. VDECS family name 6. Serial number of installed VDECS
3	**August 22, 2013**	LAKEPORT DISPOSAL **will bring one solid waste vehicle into compliance and provide the following information:** 1. A statement signed by the installer at the time of installation of the VDECS affirming that the installation was performed by an installer authorized by the VDECS manufacturer 2. The name of the company installing the device 3. The date the device was installed 4. Description of VDECS installed 5. VDECS family name 6. Serial number of installed VDECS
4	**September 1, 2013**	LAKEPORT DISPOSAL shall submit an updated compliance plan demonstrating full compliance with the Solid Waste Collection Vehicle Rule to Stephen Binning at P.O. Box 2815, Sacramento, CA 95812 or electronically at sbinning@arb.ca.gov .

(10) LAKEPORT DISPOSAL shall submit copies of all PSIP compliance records for years 2013 and 2014 to the ARB by January 31 of the following year. Copies shall be addressed to the attention of Stephen Binning at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812. The ARB reserves the right to visit LAKEPORT DISPOSAL fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

(11) LAKEPORT DISPOSAL 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.

(12) Each 1974 or newer diesel powered heavy-duty vehicle in the LAKEPORT DISPOSAL 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.

(13) LAKEPORT DISPOSAL 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.

(14) This Agreement shall apply to and be binding upon LAKEPORT DISPOSAL and their principals, agents, predecessors, successors and assignees, officers, directors, receivers, trustees, employees, subsidiary and parent corporations upon ARB 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 ARB and LAKEPORT DISPOSAL concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and LAKEPORT DISPOSAL, 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.

(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 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 Rule Violations

The per vehicle penalty for the Solid Waste Collection Vehicle Rule 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 failing to install best available control technology by the implementation deadlines in this case is $7,920.00 or $220.00 per vehicle per violation. The penalty was discounted based on the fact that this was a first time violation and financial hardship applied.

PSIP Violations

The per vehicle penalty for the PSIP violations involved in this case is a maximum of $500 per vehicle per violation per year. The penalty obtained for the PSIP violations involved in this case is $220.00 per violation for fourteen PSIP violations for a penalty of $3,080.00. The penalty was discounted based on the fact that this was a first time violation and financial hardship applied.

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 Rule (Title 13, CCR, section 2020 and 2021 *et seq.*) violations is California Health and Safety Code section 39674. The Solid Waste Collection Vehicle Rule is an Air Toxic Control Measure adopted pursuant to authority contained in California Health and Safety Code Section 39660, *et seq.* and because LAKEPORT DISPOSAL failed to install best available control technology on seven (7) vehicles by the implementation deadlines as required by the Solid Waste Collection Vehicle Rule during the years 2005 through 2011 over an unspecified number of days.

PSIP Violations

The penalty provision being applied to the PSIP violations is Health and Safety Code section 43016 because LAKEPORT DISPOSAL failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for the years 2009 and 2010 in violation of the PSIP regulation in Title 13, CCR sections 2190 *et seq*, for eight vehicles. Since the PSIP regulation was adopted pursuant to authority granted in Part 5 of Division 26 of the Health and Safety Code and since there is no specific penalty or fine provided for PSIP violations in Part 5, Health and Safety Code section 43016 is the applicable penalty provision.

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 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 units involved and their individual emission rate are not known, it is not practicable to quantify the excess emissions.

(21) LAKEPORT DISPOSAL 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.

(22) 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/vehicle basis.

(23) The penalty was based on confidential settlement communications between ARB and LAKEPORT DISPOSAL that ARB does not retain in the ordinary course of business. The penalty was discounted based on LAKEPORT Disposal's adverse financial condition, the fact that this was a first time violation. The penalty is the product of an arms length negotiation between ARB and LAKEPORT DISPOSAL and reflects ARB's assessment of the relative strength of its case against LAKEPORT DISPOSAL, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Lakeport Disposal Company, Inc. may have secured from its actions.

(24) Now therefore, in consideration of the payment on behalf of LAKEPORT DISPOSAL to the California Air Pollution Control Fund and the Peralta Colleges Foundation, the ARB hereby releases LAKEPORT DISPOSAL and their principals, agents, predecessors, successors and assignees, officers, directors, receivers, trustees, employees, subsidiary and parent corporations from any and all claims, the ARB may have or have in the future based on the circumstances described in paragraph (1) through (10) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement

California Air Resources Board	**LAKEPORT DISPOSAL COMPANY, INC.**
By:	By:
Name: James R. Ryden	Name: Craig S. Butcher
Title: Enforcement Division Chief	Title: Vice President
Date: 4/29/13	Date: April 22, 2013