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 Metropolis Disposal, 7740 Burnet Ave., Van Nuys, CA 91405-1007

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 Metropolis Disposal failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for 2011 and 2012 in violation of Title 13, CCR Sections 2190 et seq.

(9) Under authority of HSC section 39660 and 39601, CCR, title 13, sections 2020 *et seq.* requires Solid Waste Collection Vehicle fleet owners 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 Enforcement Division has documented violations of the Solid Waste Collection Vehicle Rule at the Metropolis Disposal facility in Van Nuys, 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) Metropolis Disposal 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 Metropolis Disposal, for the violations alleged above, ARB and Metropolis Disposal agree as follows:

(1) Upon execution of this Agreement, Metropolis Disposal shall pay a civil penalty of $6,000. Payment shall be made in check form as described below, and payments shall be made in three monthly payments beginning on **October 11, 2012**.

SETTLEMENT AGREEMENT AND RELEASE ARB AND METROPOLIS DISPOSAL:

	Payment Due Date:	In the Amount of and Paid to:	
(1)	**October 11, 2012**	**$ 1,500.00**	made out to **Peralta Community College District**
(2)	**November 12, 2012**	**$ 2,250.00**	made out to **California Air Pollution Control Fund**
(3)	**December 11, 2012**	**$ 2,250.00**	made out to **California Air Pollution Control Fund**

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

Allison Spreadborough, Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

(2) Metropolis 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.*

(3) Metropolis Disposal 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 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) Metropolis 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 Metropolis 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, Metropolis 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.

(4) Metropolis 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 Exhaust After Treatment Systems (EATS).

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

(5) Metropolis Disposal 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 Ms. Allison Spreadborough, at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812.

(6) Metropolis Disposal shall maintain compliance with the Solid Waste Collection Vehicle Rule. Metropolis Disposal shall keep records of installed diesel control strategies and maintain the compliance plan accordingly.

(7) Metropolis Disposal shall submit any changes to the compliance plan demonstrating compliance with the Solid Waste Collection Vehicle Rule to Ms. Allison Spreadborough, at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812.

(8) Metropolis Disposal shall submit copies of all PSIP compliance records for years 2012 and 2013 to the ARB by January 31 of the following year. Copies shall be addressed to the attention of Allison Spreadborough at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812. The ARB reserves the right to visit any Metropolis Disposal fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

(9) Each 1974 or newer diesel powered heavy-duty vehicle in the Metropolis 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.

(10) Metropolis 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.

(11) This Agreement shall apply to and be binding upon Metropolis Disposal, 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 Metropolis Disposal concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Metropolis Disposal, 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) Now, therefore, in consideration of the payment by Metropolis Disposal, in the amount of six thousand dollars ($6,000), ARB hereby releases Metropolis Disposal 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 (8) through (10) above. The undersigned represent that they have the authority to enter into this Agreement.

(18) 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.

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 four PSIP violations involved in this case is $2,000.

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 for eight violations for a penalty of $4,000. The penalty reflects the fact that this was a first time violation and the violator made unusually 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.

The penalty provision being applied to the PSIP violations is Health and Safety Code section 43016 because Metropolis Disposal failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for the years 2010 and 2011 in violation of the PSIP regulation in Title13, CCR Sections 2190 et seq, for seven 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.

The penalty provision being applied for the Solid Waste Collection Vehicle Regulation (CCR, title 13, section 2020 *et seq*.) violations is HSC section 39674. The SWCV rule is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC section 39660, *et seq*. and because Metropolis Disposal failed to use best available control technology on five vehicles as required by the Solid Waste Collection Vehicle rule during the years 2005 through 2011, over an unspecified number of days.

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.

(19) Metropolis 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.

(20) 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. The penalty was discounted based on the fact that this was a first time violation and the violator made unusually diligent efforts to comply and to cooperate with the investigation. Penalties in future cases might be smaller or larger on a per unit/vehicle basis.

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

California Air Resources Board		**Metropolis Disposal**	
By:	Karl E. Jacobs for	By:	Gary Hale
Name:	James R. Ryden	Name:	Gary Hale
Title:	Chief Enforcement Division	Title:	President
Date:	9-30-12	Date:	9/17/2012