

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and A & U Mex-Export Inc., with its principal location at 2431 Portico Blvd, Calexico, California 92231, (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) **Purpose.** The California Health and Safety Code mandates the reduction of the emission of toxic air contaminants (TAC). CARB has determined that particulate matter (PM) from diesel-fueled engines is a TAC. (Health & Saf. Code §§ 39002, et seq., 39650-39675.) In-use on-road diesel vehicles are powered by diesel fueled engines that emit toxic PM.
- (2) **Regulation.** CARB adopted the *Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles* (Truck and Bus Regulation) to reduce diesel PM and criteria pollutant emissions from on-road heavy-duty diesel-fueled vehicles. (Cal. Code Regs., tit.13, § 2025.)
- (3) **Regulatory Provisions.** Any person, business, federal government agency, school district or school transportation provider, or broker, that owns, operates, leases, rents or sells vehicles in California that operate on diesel-fuel, dual-fuel, or alternative diesel-fuel, that are registered to be driven on public highways, were originally designed to be driven on public highways whether or not they are registered, yard trucks with on-road engines or yard trucks with off-road engines used for agricultural operations, both engines of two-engine sweepers, school buses, and have a manufacturer's gross vehicle weight rating (GVWR) greater than 14,000 pounds must comply with broker requirements (Cal. Code Regs., tit. 13, § 2025.)
- (4) **Penalty Provisions.** Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to ten thousand dollars (\$10,000) for strict liability violations for each day in which the violation occurs. (Cal. Code Regs., tit.13, § 2025; Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., and 42410.)

CASE BACKGROUND

- (5) **Corporate Entity.** At all relevant times, A & U Mex-Export Inc. was organized under the laws of California as a corporation and conducted business in the State of California.

- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) HDD-2018-0025, which was issued on February 18, 2020. CARB alleges A & U Mex-Export Inc. violated the Truck and Bus Regulation by failing to comply with the broker requirements (Cal. Code Regs., tit. 13, § 2025(x)), resulting in 85 violations, as outlined in Notice of Violation HDD-2018-0025. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against A & U Mex-Export Inc. for each and every vehicle involved in the violations and each day.
- (7) Acknowledgment. A & U Mex-Export Inc. admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) Consideration. 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 alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, A & U Mex-Export Inc. has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against A & U Mex-Export Inc. for the alleged violations referred to above in the Legal Background and Case Background, and A & U Mex-Export's agreement to complete all terms and conditions set forth below, CARB and A & U Mex-Export Inc. agree as follows:

- (9) Settlement Amount. A & U Mex-Export Inc. shall pay a civil penalty of twenty thousand, three hundred seventy five dollars (\$20,375.00 USD), and agrees to fund a Supplemental Environmental Project (SEP) entitled "Installation of School Air Filtration Systems- Calexico (Imperial County)" in the amount of twenty thousand, three hundred seventy five dollars (\$20,375.00 USD), consistent with CARB's SEP Policy, for a total settlement of forty thousand, seven hundred fifty dollars (\$40,750.00 USD). A & U Mex-Export Inc. shall make all payments in accordance with the payment schedule in Paragraph [10] (Payment Plan and Schedule)].
- (10) Payment Plan and Schedule. Pursuant to this Settlement Agreement, A & U Mex-Export Inc. shall make payments below.

Payment Due Date:	In the Amount Of and Payable To:
August 1, 2020	\$20,375.00 California Air Resources Board, <i>for deposit to the Air Pollution Control Fund</i>
September 1, 2020	\$20,375.00 Imperial County Air Pollution Control District

- (11) Civil Penalty Payment Method. A & U Mex-Export Inc. shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. A & U Mex-Export Inc. is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB’s duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to A & U Mex-Export Inc. in accordance with Paragraph 18 (Notices).
- (12) SEP Payment Method(s). A & U Mex-Export Inc. shall fund the SEP by wire transfer, credit card, or check, payable to the SEP implementer/recipient, Imperial County Air Pollution Control District, using instructions provided separately by CARB in a Payment Transmittal Form. A & U Mex-Export Inc. is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to A & U Mex-Export Inc. in accordance with Paragraph [18] (Notices).
- (13) Prohibition Against Financial Benefit. A & U Mex-Export Inc. has agreed that by funding the SEP entitled “Installation of School Air Filtration Systems-Calexico (Imperial County),” A & U Mex-Export Inc. will not receive any direct or indirect financial benefit, and that whenever A & U Mex-Export Inc. publicizes or refers to the SEP or the results of the SEP, A & U Mex-Export Inc. will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (14) Assignment of Rights. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, A & U Mex-Export Inc. assigns any and all rights against the SEP implementer to CARB.

- (15) **Other Relief.** A & U Mex-Export Inc. shall not operate or direct the operation of any vehicle subject to the Truck and Bus Regulation without obtaining a completed form entitled Notice of Requirement for Carriers to Comply with California Air Resources Board's Truck and Bus Regulation (Notice), as codified in 13 CCR § 2025(x)(2) for each vehicle hired or dispatched. A copy of the Notice is enclosed hereto. The Notice may be subject to change as required by law or by mutual agreement of the parties. A & U Mex-Export Inc. shall submit a copy of each Notice for the remainder of 2020 and year 2021 to CARB by January 31 of the following year. CARB reserves the right to visit any A & U Mex-Export Inc. fleet location at any time to conduct compliance audits for the compliance requirements codified in 13 CCR § 2025(x)(2), or any other applicable CARB program.
- (16) **Acceleration.** If any payment is more than thirty (30) calendar days late from the payment schedule deadline, the entire remaining balance is accelerated to become due and payable immediately without notice or demand.
- (17) **Documents.** A & U Mex-Export Inc. shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, and/or SEP, a copy of the Payment Transmittal Form(s) , to the address or email in Paragraph [18] (Notices).
- (18) **Notices.** Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board
Enforcement Division / Settlement Agreements
Diesel Branch / Freight Hub Enforcement Section
P.O. Box 2815
Sacramento, CA 95812-2815
Settlement_Agreement@arb.ca.gov

As to A & U Mex-Export Inc.:

A & U Mex-Export Inc.
2431 Portico Blvd
Calexico, CA 92231
aumexport@sbcglobal.net

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (19) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, A & U Mex-Export Inc. shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (20) Repeat Violations. A & U Mex-Export Inc. agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (21) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background, and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of eight (8) pages and [39] paragraphs.
- (22) Binding Effect. This Settlement Agreement binds A & U Mex-Export Inc., and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (23) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (24) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (25) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (26) Choice of Law. This Settlement 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.
- (27) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 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 the benefit of a governmental unit.

- (28) Not Tax Deductible. For purposes of this Settlement Agreement, A & U Mex-Export Inc. shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
- (29) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (30) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.
- (31) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (32) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (33) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (34) Release. In consideration of the full completion of civil penalty, and SEP payment, and all other undertakings above, CARB hereby releases A & U Mex-Export Inc. and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.

- (35) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (36) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of ten thousand dollars (\$10,000) per day under Health and Safety Code section 39674, for violations of the Truck and Bus Regulation. (Cal. Code Regs., tit.13, § 2025.) The penalty of \$40,750.00 over an unspecified number of days of violation is for failure to verify that hired or dispatched vehicles were in compliance with the Truck and Bus Regulation. The penalty obtained for the Truck and Bus violation involved in this case is \$14,750.00 for 59 hired fleets in 2017 and 2018, or \$250.00 per hired fleet, and \$26,000.00 for 26 hired fleets in 2017 and 2018, or \$1,000.00 per hired fleet.
- (37) Emissions. The provisions cited above do not prohibit emissions above a specified level. Without information on engine usage and emission rates, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the vehicles did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- (38) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described by CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.

- (39) Confidential Business Information. CARB based this penalty in part on confidential business information provided by A & U Mex-Export Inc. and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: _____ /S/ _____

Name: _____ Ellen M. Peter _____

Title: _____ Chief Counsel _____

Date: _____ 8/6/2020 _____

A & U Mex-Export Inc.

Signature: _____ /S/ _____

Name: _____ Luis Arriaga _____

Title: _____ President _____

Date: _____ 7/29/2020 _____