

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 Rex Trans Inc., with its principal location at 5211 E. Washington Blvd. Suite 3, Commerce, California 90040 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

(1) Purpose.

- a. 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 and Transport Refrigeration Units (TRU) are powered by diesel fueled engines that emit toxic PM.
- b. The California Health and Safety Code mandates the reduction of emission of air pollution from motor vehicles, creates the Motor Vehicle Inspection Program, and requires CARB to adopt regulations that require owners and operators of heavy-duty vehicles to perform regular inspections of their vehicles for excess emissions. (Health & Saf. Code §§ 43013, 43018, 43701, 44011.6.)

(2) Regulation.

- a. 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* (TB Regulation) to reduce diesel PM and criteria pollutant emissions from on-road heavy-duty diesel-fueled vehicles. (Cal. Code Regs., tit.13, § 2025.)
- b. CARB adopted the *"Off-Road Airborne Toxic Control Measure for In-Use Diesel-Fueled TRU and TRU Generator Sets, and Facilities Where TRUs Operate"* Regulation (TRU Regulation) to reduce diesel PM and criteria pollutant emissions from diesel-fueled TRUs and TRU generator sets (TRU gen set). (Cal. Code Regs., tit.13, § 2477 et seq.)
- c. CARB adopted the *"Periodic Smoke Inspections of Heavy-Duty Diesel-Powered Vehicles"* Regulation (Cal. Code Regs., tit. 13, §§ 2190 et seq.) (PSIP Regulation) to reduce excess smoke opacity emissions from heavy-duty vehicles.

(3) Regulatory Provisions.

- a. 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) of 26,001 pounds or greater with 2005 or older model year engines must comply with the engine model year schedule by January 1, 2014. (Cal. Code Regs., tit. 13, § 2025.)
- b. No person in this State, including, but not limited to, manufacturers, distributors, dealers, and carriers shall lease, offer to lease, rent, or offer to rent, in this state any new or used TRU or TRU gen set engine that does not meet the performance requirements. (Cal. Code Regs., tit. 13, § 2477.18(c))
- c. The PSIP Regulation requires owners and operators of heavy-duty diesel vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate within the State of California to conduct annual smoke opacity inspections (or on-board diagnostic review for model year 2013 engines or newer) of their vehicles by a CARB-approved trained smoke tester, using smoke test equipment and procedures that comply with the Society of Automotive Engineers (SAE) procedures J1667, "Snap Acceleration Smoke Test Procedure for Heavy-Duty Powered Vehicles." Owners and Operators must also keep records of this data and provide to CARB upon request. (Cal. Code Regs., tit. 13, §§ 2190-2194.)

(4) Penalty Provisions.

- a. 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, respectively, for each day in which the violation occurs. (Cal. Code Regs., tit.13, § 2025 and Cal. Code Regs., tit.13, § 2477-2477.21; Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., and 42410.)
- b. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to one thousand eight hundred dollars (\$1,800) for each strict liability violation of the PSIP Regulation,

respectively, for each day in which the violation occurs. (Health & Saf. Code, § 44011.6; Cal. Code Regs., tit.13, § 2190 et seq.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Rex Trans Inc. was organized under the laws of California as a Corporation and conducted business in the State of California.
- (6) Allegations.
- a. This Settlement Agreement resolves Notice of Violation (NOV) 00327, which was issued on January 7, 2021. CARB alleges Rex Trans Inc. violated the TB Regulation by failing to comply with the Engine Model Year Compliance Schedule requirements (Cal. Code Regs., tit. 13, § 2025(g)), resulting in 7 vehicles in violation. CARB alleges that if the allegations described in the underlined headings 1 through 6 were proven, civil penalties could be imposed against Rex Trans Inc. for each, and every vehicle involved in the violations and each day.
 - b. This Settlement Agreement resolves NOV 00327, which was issued January 7, 2021. CARB alleges Rex Trans Inc. violated the TRU Regulation by failing to comply with the requirements prohibiting carriers from leasing TRUs that do not meet the in-use performance requirements (Cal. Code Regs., tit. 13, § 2477.18(c)), resulting in five violations because three leased noncompliant TRU-equipped trailers were put in use in 2019 and two leased noncompliant TRU-equipped trailers were put in use in 2020. CARB alleges that if the allegations described in the underlined headings 1 through 6 were proven, civil penalties could be imposed against Rex Trans Inc. for each, and every vehicle involved in the violations and each day.
 - c. Rex Trans Inc. has one outstanding citation (TRU051221003SA, dated May 12, 2021) for not meeting the requirements of the TRU ATCM. This citation will be cleared through this Agreement.
 - d. This Settlement Agreement resolves NOV 00327, which was issued on January 7, 2021. CARB alleges Rex Trans Inc. violated the PSIP Regulation by owning or operating heavy-duty vehicles with gross vehicle weight greater than 6,000 pounds in California and failing to conduct annual smoke opacity inspections resulting in 21 violations in 2019 and 17 violations in 2020. CARB alleges that if the allegations described in

the underlined headings 1 through 6 were proven, civil penalties could be imposed against Rex Trans Inc. for each and every vehicle involved in the violations and each day.

- (7) Acknowledgment. Rex Trans Inc. admits to the facts in the underlined headings 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, Rex Trans 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 Rex Trans Inc. for the alleged violations referred to above in the Legal Background and Case Background, and Rex Trans Inc.'s agreement to complete all terms and conditions set forth below, CARB and Rex Trans Inc. agree as follows:

- (9) Settlement Amount. Rex Trans Inc. shall pay a civil penalty of thirty-one thousand dollars (\$31,000.00 USD). Rex Trans 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, Rex Trans Inc. shall make payments below, with the first payment due within 30 days of Rex Trans Inc. receiving notification that the Settlement Agreement has been fully executed:

Payment Due Date:	In the Amount of and Payable to:	
30 days from notification of signed settlement agreement	\$3,000	California Air Resources Board
60 days from notification of signed settlement agreement	\$3,000	California Air Resources Board
90 days from notification of signed settlement agreement	\$2,500	California Air Resources Board

120 days from notification of signed settlement agreement	\$2,500	California Air Resources Board
150 days from notification of signed settlement agreement	\$2,500	California Air Resources Board
180 days from notification of signed settlement agreement	\$2,500	California Air Resources Board
210 days from notification of signed settlement agreement	\$2,500	California Air Resources Board
240 days from notification of signed settlement agreement	\$2,500	California Air Resources Board
270 days from notification of signed settlement agreement	\$2,500	California Air Resources Board
300 days from notification of signed settlement agreement	\$2,500	California Air Resources Board
330 days from notification of signed settlement agreement	\$2,500	California Air Resources Board
360 days from notification of signed settlement agreement	\$2,500	California Air Resources Board

- (11) Civil Penalty and Mitigation Payment Method. Rex Trans Inc. shall pay the civil penalty and mitigation by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Rex Trans 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 and mitigation 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 Rex Trans Inc. in accordance with the underlined heading 17 (Notices).
- (12) Compliance Plan. Rex Trans Inc. shall submit and if approved by CARB, implement a TRU Compliance Plan, within 30 days to ensure that Rex Trans Inc. complies with all provisions of the laws and regulations outlined in the Legal Background and

where applicable, Compliance Schedule, the provisions of which are incorporated by reference herein.

- (13) Other Relief. Rex Trans Inc. shall comply with one of the following options: attend the California Council on Diesel Education and Technology (CCDET I) class, (SAE J1667 Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles) as described on the CCDET webpage www.ccdet.org/class-schedule/, or CARB's Online Training for Fleet Owners/Employees (MS529 Online Smoke-Test Training) at <https://ww2.arb.ca.gov/our-work/programs/heavy-duty-diesel-inspection-periodic-smoke-inspection-program/hdvip-psip>.
- a. Rex Trans Inc. shall have the fleet maintenance manager (or equivalent) attend the CCDET I class or the CARB Online Training for Fleet Owners/Employees (MS529 Online Smoke-Test Training). Proof of completion of either course shall be submitted to CARB within six months of the date of this Settlement Agreement and be maintained in each applicable employee's file for the term of his or her employment.
 - b. If Rex Trans Inc. uses a contractor to perform the annual smoke opacity testing required under the PSIP Regulation, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET I or CARB course, Rex Trans Inc. 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 CARB with PSIP Regulation records as required by this Settlement Agreement and be maintained with the annual PSIP Regulation records.
- (14) Other Relief. Rex Trans Inc. shall provide copies of all PSIP compliance records for the years 2021 and 2022 to CARB by January 31st of the following year.
- (15) 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.
- (16) Documents. Rex Trans Inc. shall promptly email or mail the signed and dated Settlement Agreement, with a copy of the Payment Transmittal Forms, and the signed and dated Compliance Plan to the address or email in the underlined heading 17 (Notices).
- (17) 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 Programs Enforcement Branch
Statewide Truck and Bus Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to Rex Trans Inc.:

Rex Trans Inc.
Diego Balarezo
5211 E. Washington Blvd. Suite 3
Commerce, California 90040
RexTransInc3@gmail.com

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.

- (18) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Rex Trans Inc. shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (19) Repeat Violations. Rex Trans Inc. agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (20) 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 11 pages and 38 underlined headings.
- (21) Binding Effect. This Settlement Agreement binds Rex Trans 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.
- (22) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.

- (23) 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.
- (24) 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.
- (25) 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.
- (26) 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.
- (27) Not Tax Deductible. For purposes of this Settlement Agreement, Rex Trans 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.
- (28) 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.
- (29) 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.
- (30) 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.

- (31) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (32) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (33) Release. In consideration of the full completion of civil penalty, and all other undertakings above, CARB hereby releases Rex Trans 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.
- (34) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (35) Per Unit Penalty.
- a. TB 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 TB Regulation. (Cal. Code Regs., tit.13, § 2025.) The penalty of seven thousand dollars (\$7,000 USD) over an unspecified number of days of violation is for seven noncompliant vehicles with 1995 and older model year engines and a GVWR of greater than 26,001 pounds. The per unit penalty in this case is approximately one thousand dollars (\$1,000 USD) per noncompliant vehicle.
 - b. TRU 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 TRU Regulation. (Cal. Code Regs., tit.13, § 2477.19.) The penalty of five thousand dollars (\$5,000 USD) over an unspecified number of days of violation is for 3 leased noncompliant TRU-equipped trailers in 2019 and 2 leased noncompliant TRU-equipped trailers in 2020. The per unit penalty in this case is approximately one thousand dollars (\$1,000 USD) per leased noncompliant TRU-equipped trailer. The penalties assessed above will incorporate the penalty amount for the citation TRU051221003SA issued on May 12, 2021.
 - c. PSIP Penalty. The per unit or per vehicle penalty in this case is a

maximum of forty thousand seven hundred twenty-five dollars (\$40,725.00) per vehicle that is in violation of the Health and Safety Code, section 43016 and PSIP Regulation (Cal. Code Regs., tit.13, § 2190 et seq.) The penalty of nineteen thousand dollars (\$19,000 USD) over an unspecified number of days of violation is for 21 noncompliant heavy-duty vehicles in 2019 and 17 noncompliant heavy-duty vehicles in 2020. The per unit penalty in this case is approximately five hundred dollars (\$500 USD) per noncompliant vehicle.

- (36) Emissions. The provisions cited above do 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.
- (37) 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.

- (38) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Rex Trans 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: 12/6/2021

Rex Trans Inc.

Signature: /S/

Name: Diego Balarezo

Title: President

Date: 10/20/2021