

## 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 Associated Ready Mixed Concrete, Inc. (Associated Ready Mixed Concrete), with its principal location at 4621 Teller Avenue, Suite 130, Newport Beach, California 92660 (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 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 *"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 that owns or operates, 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 and have a manufacturer's gross vehicle weight rating (GVWR) of 26,001 pounds or greater must meet PM Best Available

Control Technology (BACT) requirements for all 2003 through 2006 model year engines by January 1, 2019 (Cal. Code Regs., tit. 13, § 2025.)

- b. 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 of their vehicles 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 nine hundred and ten dollars (\$10,910.00 USD) for strict liability violations, twenty-seven thousand two hundred seventy-five dollars (\$27,275.00 USD) for negligent violations; and forty-three thousand six hundred forty dollars (\$43,640.00 USD) for failing to take corrective action, and eighty-one thousand eight hundred twenty-five dollars (\$81,825.00 USD) for willful and intentional violations, respectively, 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., [42400.1, 42400.2, 42402.3], and 42410.) 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., [42400.1, 42400.2, 42402.3], and 42410.)
- b. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to forty thousand seven hundred twenty-five dollars (\$40,725.00 USD) for each strict liability violation of the PSIP Regulation. (Health & Saf. Code, § 43016; Cal. Code Regs., tit.13, § 2190 et seq.)

### CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Associated Ready Mixed Concrete 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) 00328, which was issued on April 16, 2021. CARB alleges Associated Ready Mixed violated the Truck and Bus (TB) Regulation by failing to comply with the Phase-in Compliance Schedule requirements (Cal. Code Regs., tit. 13, § 2025(i)), resulting in 65 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 Associated Ready Mixed for each, and every vehicle involved in the violations and each day.
- b. This Settlement Agreement resolves NOV 00328, which was issued on April 16, 2021. CARB alleges Associated Ready Mixed Concrete 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 keep records specified in Cal. Code Regs., tit. 13, § 2194 for two years after the date of inspection resulting in 171 violations in 2018. CARB alleges that if the allegations described in the underlined headings 1 through 6 were proven, civil penalties could be imposed against Associated Ready Mixed Concrete for each and every vehicle involved in the violations and each day.

(7) Acknowledgment. Associated Ready Mixed Concrete admits to the facts in 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, Associated Ready Mixed Concrete 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 legal action against Associated Ready Mixed Concrete for the alleged violations referred to above in the Legal Background and Case Background, and Associated Ready Mixed Concrete's agreement to complete all terms and conditions set forth below, CARB and Associated Ready Mixed agree as follows:

- (9) Settlement Amount. Associated Ready Mixed Concrete shall pay a civil penalty of one hundred fifty thousand five hundred dollars (\$150,500.00 USD). Associated Ready Mixed Concrete shall make payment within 30 calendar days from the date CARB notifies Associated Ready Mixed of the full execution of the Settlement Agreement.
- (10) Civil Penalty and Mitigation Payment Method. Associated Ready Mixed Concrete 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. Associated Ready Mixed 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 Associated Ready Mixed Concrete in accordance with the underlined heading 14 (Notices).
- (11) Other Relief. Associated Ready Mixed Concrete 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/](http://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/hvip-psip>.
- a. Associated Ready Mixed Concrete 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 Associated Ready Mixed Concrete 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, Associated Ready Mixed Concrete 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.

Associated Ready Mixed Concrete, Inc. Settlement Agreement  
Notice of Violation: NOV 00328

- (12) Other Relief. Associated Ready Mixed Concrete shall provide copies of all PSIP compliance records for the years 2022 and 2023 to CARB by January 31st of the following year.
- (13) Other Relief. Associated Ready Mixed Concrete shall provide documentation for the 43 trucks that were removed from service because they failed their smoke opacity tests in 2019. The documentation must detail the action taken for those 43 trucks that may include, but is not limited to, being sold or scrapped.
- (14) Documents. Associated Ready Mixed Concrete shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty and a copy of the Payment Transmittal Form to the address or email in the underlined heading 14 (Notices).
- (15) 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  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to Associated Ready Mixed Concrete, Inc.:

Associated Ready Mixed Concrete, Inc.  
Jaret Ramirez  
4621 Teller Avenue, Suite 130  
Newport, California, 92660  
Jramirez@bristolmsi.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.

- (16) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Associated Ready Mixed Concrete shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.

- (17) Repeat Violations. Associated Ready Mixed Concrete agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (18) 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 10 pages and 36 underlined headings.
- (19) Binding Effect. This Settlement Agreement binds Associated Ready Mixed Concrete, 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.
- (20) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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.
- (25) 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.

- (26) 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.
- (27) 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.
- (28) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (29) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (30) Release. In consideration of the full completion of civil penalty and all other undertakings above, CARB hereby releases Associated Ready Mixed Concrete, 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.
- (31) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

#### **PENALTY BASIS**

- (32) Per Unit Penalty.
- a. TB Penalty. The per unit or per vehicle penalty in this case is a maximum of ten thousand nine hundred ten dollars (\$10,910.00 USD) per day under Health and Safety Code section 39674, for violations of the TB Regulation. (Cal. Code Regs., tit.13, § 2025.) The penalty of sixty-five thousand dollars (\$65,000.00 USD) over an unspecified number of days of violation is for 65 noncompliant vehicles with 2003 through 2006 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. 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 USD) 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 eighty-five thousand five hundred dollars (\$85,500 USD) over an unspecified number of days of violation is for 171 violations in 2018. The per unit penalty in this case is approximately five hundred dollars (\$500.00 USD) per violation.

- (33) 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 the emissions from it were excess and illegal.
- (34) 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.
- (35) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Associated Ready Mixed Concrete, and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business



(36) Effect of Settlement/Reservation of Rights. The following shall apply:

- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Associated Ready Mixed Concrete with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Associated Ready Mixed Concrete with respect to:
  - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
  - (ii) Facts that were not disclosed by Associated Ready Mixed Concrete to CARB.
  - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
  - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
  - (v) Any criminal liability.
  - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Associated Ready Mixed Concrete shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of Associated Ready Mixed Concrete or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Associated Ready Mixed Concrete, except as otherwise provided by law. This Settlement Agreement

shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.

- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Associated Ready Mixed Concrete is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Associated Ready Mixed Concrete's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Associated Ready Mixed Concrete's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

**ACKNOWLEDGED AND ACCEPTED BY:**

**California Air Resources Board**

Signature: /S/

Name: Richard W. Corey / by Ellen M. Peter, Chief Counsel

Title: Executive Officer

Date: June 9, 2022

**Associated Ready Mixed Concrete, Inc.**

Signature: /S/

Name: Jaret Ramirez

Title: C.O.O.

Date: May 17, 2022