

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 Maggiora Bros. Drilling, Inc., with its principal location at 595 Airport Boulevard, Watsonville, California 95076 (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), oxides of nitrogen (NOx), and diesel particulate matter (PM). (Health & Saf. Code, §§ 39002, et seq., 39650-39675.) CARB has determined that particulate matter (PM) from diesel-fueled engines is a TAC. In-use off-road diesel fueled 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 *In-Use Off-Road Diesel-Fueled Fleet Regulation* (Off-Road Regulation) to reduce diesel PM and criteria pollutant emissions from in-use off-road diesel-fueled vehicles. (Cal. Code Regs., tit.13, § 2449 et seq.)
- b. 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.)
- 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, or government agency who owns or operates an off-road vehicle with a diesel-fueled or alternative diesel-fueled off-road compression-ignition engine with a maximum power of 25 horsepower or greater or other specified off-road equipment, in California must meet the requirements of the Off-Road Regulation. (Cal. Code Regs., tit.13, § 2449, subd. (a).) These requirements include performance standards, a requirement to label each piece of equipment with a CARB-issued Equipment Identification Number (EIN), reporting requirements, the latter of which includes a requirement to notify CARB of the sale of a piece of equipment within 30 days, a requirement to disclose to the purchaser that the equipment is subject to the Off-Road Regulation, and a requirement to maintain records. (Cal. Code Regs., tit.13, § 2449, et seq.)
- b. 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 with 1986-2002 model year engines must comply with the low use reporting requirements, schedule to upgrade the engines, or PM Best Alternative Control Technology (BACT) requirements. (Cal. Code Regs., tit. 13, § 2025.)
- 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 Off-Road Regulation's and Truck and Bus Regulation's requirements is a violation of State law that may result in

penalties of up to forty thousand, seven hundred twenty five dollars (\$40,725.00 USD) for each strict liability violation for each day on which a violation occurs. (Cal. Code Regs., tit. 13 § 2449; Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., 42400.1, 42400.2, 42402.3, and 42410, 43016.)

- b. Failure to comply with the PSIP regulatory requirements is a violation of state law that may result in penalties up to forty-two thousand four hundred fifty dollars (\$42,450.00 USD) for each strict liability violation of the PSIP Regulation, respectively, for each day in which the violation occurs. (Health & Saf. Code, § 43016 ; Cal. Code Regs., tit.13, § 2190 et seq.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Maggiore Bros. Drilling, Inc. was organized under the laws of the state of California as a stock corporation and conducted business in the State of California.
- (6) Compliance Options. Maggiore Bros. Drilling, Inc. had elected to utilize the low-use vehicle exemption (Cal. Code Regs., tit. 13, § 2025(p)(4)) in the Truck and Bus Regulation for vehicles VINs 1HTTGAST1XJ004734, 1HTXHAST03J076730, 1NP5LU0X1VD429450, and 1XP9D29X5HN206225.
- (7) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) 00391, which was issued on April 13, 2022. CARB alleges that Maggiore Bros. Drilling, Inc. violated the Off-Road Regulation by failing to comply with the in-use compliance requirements by the compliance date (Cal. Code Regs., tit. 13, § 2449(d)), resulting in 365 days of violations, as outlined in NOV 00391. CARB also alleges Maggiore Bros. Drilling, Inc. violated the Truck and Bus Regulation by failing to comply with the reporting requirements (Cal. Code Regs., tit. 13, § 2025(r)), compliance schedule (Cal. Code Regs., tit. 13, § 2025(e), (f), (g), (h), (k), (l), (m), (n), (o)), and BACT requirements (Cal. Code Regs., tit. 13, § 2025(s)), resulting in 1,460 days of violations, as outlined in Notice of Violation NOV 00391. CARB also alleges that Maggiore Bros. Drilling, 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 keep adequate records (Cal. Code Regs., tit. 13 § 2190 et seq.), resulting in 25 violations, as outlined in Notice of Violation NOV 00391. CARB alleges that if paragraphs 1 through 7 were proven, civil penalties could be imposed against Maggiore Bros. Drilling, Inc. for each and every vehicle involved in the violations and each day.
- (8) Acknowledgment. Maggiore Bros. Drilling, Inc. admits to the facts in paragraphs 1 through 7, but denies any liability resulting from said allegations.

- (9) 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, Maggiora Bros. Drilling, 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 Maggiora Bros. Drilling, Inc. for the alleged violations referred to above in the Legal Background and Case Background, and Maggiora Bros. Drilling, Inc. agreement to complete all terms and conditions set forth below, CARB and Maggiora Bros. Drilling, Inc. agree as follows:

- (10) Compliance Plan. Maggiora Bros. Drilling, Inc. shall submit to CARB and implement a Compliance Plan within 45 days to ensure that Maggiora Bros. Drilling, Inc. complies with all provisions of the laws and regulations outlined in the Legal Background; and where applicable, a Compliance Schedule, the provisions of which are incorporated by reference herein.
- (11) Other Relief. Maggiora Bros. Drilling, Inc. shall submit periodic smoke opacity tests for 2022 and 2023 by January 31 of the following year.
- (12) Suspended Penalties. If Maggiora Bros. Drilling, Inc. fails to comply with each and every requirement set out in this Settlement Agreement within 90 days of its execution, the Parties agree that Maggiora Bros. Drilling, Inc. shall pay the suspended portion of this penalty, forty nine thousand five hundred dollars (\$49,500.00 USD), to CARB for deposit into the Air Pollution Control Fund for the purpose of carrying out its functions and duties, within sixty (60) calendar days of the notice by CARB to Maggiora Bros. Drilling, Inc. of the Settlement Agreement violation.
- (13) Documents. Maggiora Bros. Drilling, Inc. shall promptly email or mail the signed and dated Settlement Agreement and the signed and dated Compliance to the address or email in Paragraph 14 (Notices).
- (14) 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 / Specialized Fleet Enforcement
Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to Maggiora Bros. Drilling, Inc.:
Maggiora Bros. Drilling, Inc.
595 Airport Blvd
Watsonville, CA 95076
watsonville@maggiorabros.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.

- (15) Repeat Violations. Maggiora Bros. Drilling, Inc. agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (16) 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 34 paragraphs.
- (17) Binding Effect. This Settlement Agreement binds Maggiora Bros. Drilling, 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.
- (18) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (19) 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.
- (20) 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.

- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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.
- (25) 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.
- (26) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (27) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (28) Release. In consideration of full compliance, and all other undertakings above, CARB hereby releases Maggiara Bros. Drilling, 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.
- (29) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

(30) Per Unit Penalty.

- a. The per unit or per vehicle penalty in this case is a maximum of ten thousand dollars (\$42,450.00 USD) per violation under Health and Safety Code section 43016, for violations of the Off-Road Regulation. (Cal. Code Regs., tit.13, § 2449 et seq.) The suspended penalty amount for the Off-Road Regulation is \$24,000 for noncompliance with the schedule for medium sized off-road fleets and \$1,000 for missing the Responsible Official Affirmation of Reporting (ROAR) form in 2021. The suspended penalty amount for the Truck and Bus Regulation of \$12,000 over an unspecified number of days of violation is for 4 noncompliant vehicles with 1987, 1996, 1998, and 2002 model year engines and a GVWR of greater than 14,000 pounds. The per unit suspended penalty in this case is approximately \$3,000 per noncompliant vehicle.
- b. The per unit or per vehicle penalty in this case is a maximum of forty-two thousand four hundred fifty dollars (\$42,450.00 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 suspended penalty of \$12,500 over an unspecified number of days of violation is for 16 noncompliant heavy-duty vehicles. The per unit suspended penalty in this case is approximately \$500 per noncompliant vehicle (16 violations in 2018 and 9 violations in 2019).
- c. CARB made a settlement offer to reduce penalties if the fleet agreed to completing further stipulated terms of settlement. In response, Maggiore Bros. Drilling, Inc. applied for Financial Hardship relief from the settlement offer penalties. CARB's review of Maggiore Bros. Drilling, Inc.'s Financial Hardship found they were eligible for relief. CARB then amended the settlement offer to suspend the penalties at the level of the original settlement offer pending Maggiore Bros. Drilling, Inc.'s satisfactory completion of further settlement terms. CARB will remove the penalty component entirely upon determination that Maggiore Bros. Drilling, Inc. has satisfactorily completed the further settlement terms.

(31) Emissions. The provisions cited above do prohibit emissions above a specified level. Maggiore Bros. Drilling, Inc. could not provide information on engine usage and emission rates, so 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 them were excess and illegal.

(32) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors and

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; the nature and persistence of the violation, including the magnitude of the excess emissions; the violator's compliance history; preventative efforts taken by the violator, including action taken to mitigate the violation; the innovative nature and 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; financial burden to the violator; and whether the violator voluntarily disclosed the violation. 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 in consideration of 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.

- (33) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Maggiora Bros. Drilling, Inc. or confidential settlement communications.
- (34) 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 Maggiora Bros. Drilling, Inc. 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 Maggiora Bros. Drilling, Inc. with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Maggiora Bros. Drilling, Inc. 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, Maggiora Bros. Drilling, Inc. 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 Maggiora Bros. Drilling, Inc. 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 Maggiora Bros. Drilling, Inc., 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. Maggiora Bros. Drilling, Inc. is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Maggiora Bros. Drilling, Inc. 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 Maggiora Bros. Drilling, Inc. 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: Ellen M. Peter

Title: Chief Counsel

Date: January 24, 2023

Maggiora Bros. Drilling, Inc.

Signature: /S/

Name: Mark Maggiora

Title: Treasurer

Date: December 16, 2022