

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into between the State of California Air Resources Board (CARB), principally located at 1001 I Street, Sacramento, California 95814, and Hapag-Lloyd AG (HLS), principally located at Ballindamm 25, D-20095 Hamburg, Germany.

RECITALS

- (1) Health and Safety Code sections 39650 through 39675 mandate the reduction of the emission of substances that have been determined to be toxic air contaminants (TAC). In 1998, following an exhaustive 10-year scientific assessment process, CARB identified particulate matter from diesel-powered engines as a TAC.
- (2) California Code of Regulations (CCR), title 13, section 2299.2 (13 CCR § 2299.2) and CCR, title 17, section 93118.2 (17 CCR § 93118.2) applies to any person who owns, operates, charters, rents, or leases any ocean-going vessel (OGV) that operates in Regulated California Waters (RCW).
- (3) The regulation's operational requirements for fuel sulfur content limits for auxiliary diesel engines, main engines, and auxiliary boilers are set forth in 13 CCR § 2299.2 (e) (1) and 17 CCR § 93118.2 (e) (1).
- (4) Under 13 CCR § 2299.2 (f) and 17 CCR § 93118.2 (f), any failure to meet the regulation's requirements, "including but not limited to the applicable fuel sulfur content limits; recordkeeping requirements; and Noncompliance Fee provision shall constitute a single, separate violation of this section for each hour that a person operates an OGV in RCW until such provision, criteria or requirement has been met."
- (5) Failure to properly complete the operational requirements of the regulation is a violation of State Law resulting in penalties. Health and Safety Code sections 39674, 39675, 42400 et seq., 42402 et seq., and 42410, authorize civil or administrative penalties not to exceed \$10,000.00 for each day that the violation occurs.
- (6) CARB alleges that HLS failed to properly complete the operational requirements of the regulation on a single voyage into California; that the vessel *Yantian Express* operated within RCW in violation of this regulation for three days and three hours from November 1, through November 4, 2019.
- (7) HLS admits the facts in Recitals 1 through 6 above, solely for purposes of this Agreement and any future enforcement action by CARB against HLS.

- (8) In order to resolve these violations, HLS has taken, or agrees to take, the actions enumerated below within the Terms and Release. CARB accepts this Agreement in termination and settlement of this matter.
- (9) 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 Agreement.

TERMS AND RELEASE

In consideration of CARB not filing a legal action against HLS for the violations referred to above, CARB and HLS agree as follows:

- (10) HLS shall sign the Agreement by March 26, 2020. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement.

HLS shall mail the executed Agreement in an envelope marked confidential by March 26, 2020 to:

Mr. Alexander Barber
Air Pollution Specialist
California Air Resources Board
9480 Telstar Avenue, Suite 4
El Monte, California 91731

- (11) HLS shall pay the sum of twenty one thousand dollars (**\$24,750.00 USD**) to the **California Air Pollution Control Fund**. HLS shall submit the payment along with the enclosed Settlement Agreement Payment Transmittal Form **30 days** from full execution of the Agreement to:

California Air Resources Board Accounting Office
P.O. Box 1436
Sacramento, California 95812-1436

- (12) The effective date of this Agreement shall be the date upon which both Parties execute this Agreement.
- (13) HLS shall accurately comply with fuel switchover, keep accurate records, and comply with all other requirements of 13 CCR § 2299.2 or 17 CCR § 93118.2, Air Toxic Control Measure (ATCM).
- (14) This Agreement constitutes the entire agreement and understanding between CARB and HLS concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between CARB and HLS concerning the subject matter hereof.
- (15) This Agreement shall apply to and be binding upon HLS and its officers, directors, receivers, trustees, employees, successors and assignees, parent corporation, and subsidiaries, if any, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (16) The terms and conditions set forth in this Agreement shall remain valid and enforceable notwithstanding any future violations that may occur.
- (17) No agreement to modify, amend, extend, enlarge, 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.
- (18) Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid, or unenforceable in any jurisdiction, the remainder of this Agreement shall remain in full force and effect.
- (19) 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.
- (20) 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.
- (21) It is further agreed that the stipulated penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7).
- (22) **Penalty Determination**

Pursuant to Health and Safety Code section 39619.7, CARB must provide information on the basis for the penalties it seeks. This information is

provided throughout this settlement agreement and summarized below:

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 43024 and 43403.

The per-unit penalty in this case is a maximum of \$10,000.00 per day for strict liability violation pursuant to Health and Safety Code section 39674. The vessel *Yantian Express* operated on fuel within RCW that did not meet the distillate fuel standard for three days in violation of the regulation. The penalty obtained in this case is \$7,500.00 per day, \$750.00 per hour, for a total penalty of \$24,750.00 USD after considering all factors specified in Health and Safety Code sections 43403 and 43024.

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 case negotiations, and the potential cost and risk associated with litigating these particular violations. The penalty also reflects penalties obtained in other OGV violation cases as well as the fact that this was a first time violation, and that HLS implemented additional steps to their fuel change procedures to ensure future compliance and cooperated completely with the investigation. Penalties in future cases might be smaller or larger on a per unit basis.

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 in this case is Health and Safety Code section 39674 because HLS failed to comply with ATCM adopted under Health and Safety Code section 39600 et seq.

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.

Since CARB has alleged that the fuel used did not meet regulatory requirements; all of the emissions from it were excess and illegal. Without information on engine usage and emission rates, however, quantifying these excess emissions is not practicable.

