

This Settlement Agreement (Agreement) is entered into as of February 24, 2017 between, on the one hand, the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB) 1001 I Street, Sacramento, California 95814, and on the other hand, Lake Shore Energy Operations Group, LLC (LSEOG) and Lake Shore Mojave, LLC (LSM).

RECITALS

1. The Global Warming Solutions Act of 2006 authorized ARB to adopt regulations to reduce greenhouse gas emissions, including market-based approaches. (Health & Saf. Code §§38560, 38570.) Pursuant to that authority, ARB adopted the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (Regulation), California Code of Regulations (CCR), title 17, §95801 et seq.
2. The Regulation is crucial to reducing greenhouse gas (GHG) emissions, and includes several provisions intended to ensure a fair and functional market.
3. California Health & Safety Code sections 38580 and 42402 et seq. provide that one who violates the Regulation is strictly liable for a penalty of up to \$10,000 per violation. CCR, title 17, §96014 provides that there is a separate violation for each required compliance instrument not surrendered.
4. ARB contends that LSEOG and LSM failed to comply with the Regulation during 2015 because the company did not surrender all of the compliance instruments required pursuant to sections 95855 – 95857 of the Regulation for the first compliance period.
5. In reaching this settlement, ARB considered a variety of circumstances, including the nature of the violator's business, the nature, magnitude, and duration of the violation, any harm to the regulatory program, efforts the violator took to prevent the violation and to correct it, and the financial burden to the violator.
6. In this matter, there were mitigating factors, including that the company made efforts to cooperate with ARB's investigation and the power plant that was the company's largest single asset was rendered inoperable by a catastrophic accident in August 2013 and the facility was forced to shut down.
7. In order to resolve these alleged violations, LSEOG and LSM have taken, or agreed to take, the actions enumerated below. Further, ARB accepts this Agreement in termination and settlement of this matter.
8. 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 violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB, LSEOG, and LSM agree as follows.

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TERMS

9. LSEOG and LSM agree to a stipulated penalty in the amount of \$2,990,600 and ARB covenants not to execute on the stipulated penalty provided that LSEOG and LSM fulfill the obligations set out in the following paragraph.

10. LSEOG and LSM will purchase and retire 119,624 compliance instruments of any vintage. In the alternative, if sufficient funds are not available to make that purchase, LSEOG and LSM will liquidate all remaining assets of the business no later than June 1, 2017, and all remaining funds will be applied towards the purchase of California compliance instruments of any vintage, including any transaction fees, with a maximum limit of 3,417 offsets credits that could be used to fulfill the compliance obligation owed for 2013 covered greenhouse gas emissions. LSM will surrender these compliance instruments through the CITSS system to ARB. If LSM cannot liquidate its emission reduction credits that are qualified for banking (corresponding to approximately 42 tons for NOx, 3 tons of particulate matter, and 4 tons of VOCs), LSM will surrender all of its emission reduction credits to the Eastern Kern Air Pollution Control District for retirement. ARB agrees to accept the surrenders of compliance instruments and emission reduction credits as full satisfaction of the penalty. In the event other winding-down expenses arise, LSEOG and LSM will seek ARB approval prior to payment. The following payments will not be approved: payments under the Asset Management Agreement of July 21, 2011; payments under the Operation and Maintenance Agreement originally entered in August 2011; payments to investors.

12. Once this Agreement has been fully executed, LSEOG and LSM shall send the signed settlement agreement to:

William Brieger
Air Resources Board
P.O. Box 2815
Sacramento, CA 95812-2815

11. It is further agreed that the penalties described in paragraph 9 are punitive in nature, rather than compensatory, and payable to a governmental unit. Therefore, it is agreed that these penalties are non-dischargeable under 11 United States Code § 523 (a)(7).

12. This Agreement shall apply to and be binding upon LSEOG and LSM, and officers, directors, receivers, trustees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

13. This Agreement constitutes the entire agreement and understanding between ARB, LSEOG, and LSM concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB, LSEOG, and LSM concerning the subject matter hereof.

14. No agreement to modify, amend, extend, 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.

15. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

16. 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.

17. 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.

PENALTY BASIS

18. Health & Safety Code section 39619.7 requires ARB to explain the manner in which the penalty was determined, the law on which it is based, and whether that law prohibits emissions at a specified level. LSEOG and LSM acknowledge that ARB has complied with section 39619.7 in investigating, prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health & Safety Code section 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed, which provision does not prohibit the emission of pollutants at a specified level. That information, some of which is also elsewhere in this settlement agreement, is summarized here.

The manner in which the penalty was determined, including any per unit penalty. Penalties must be set at levels sufficient to deter violations. The penalties in this matter were determined based on all relevant circumstances, including the unique circumstances of this case, giving consideration to the eight factors specified in Health & Safety Code section 42403. Consideration was given to the extent to which the violation deviated from Regulation's requirements, the cause of the violation, and whether the violator gained in any way from the violation. Those circumstances were considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, penalties sought in other cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger.

In this matter the penalty reflects 29,906 compliance instruments that were due pursuant to section 95856 of the Regulation but not surrendered, at \$100 per instrument. The penalty was discounted based on the facts that the company has virtually no assets, made efforts to cooperate with ARB's investigation, and applied all remaining funds towards the purchase of compliance instruments owed to ARB to account for verified 2013 covered greenhouse gas emissions.

The legal provisions under which the penalty was assessed and why those provisions are appropriate. The penalty is based on Health & Safety Code section

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42402 and CCR, title 17, sections 96013 and 96014, the provisions intended to govern violations of the Regulation.

Whether the governing provisions prohibit emissions at a specified level. The provisions above do not prohibit emissions above a stated level, but Health & Safety Code section 38580(b)(2) specifies that violations of any regulation under the Global Warming Solutions Act of 2006 shall be deemed to result in an emission for purposes of the governing penalty statutes.

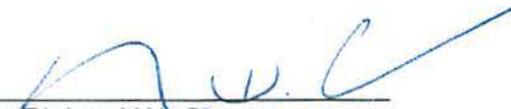
19. The penalty was based on confidential settlement communications between ARB, LSEOG, and LSM. The penalty is the product of an arms length negotiation between ARB and the company and reflects ARB's assessment of the relative strength of its case against the company, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that the company may have secured from its actions.

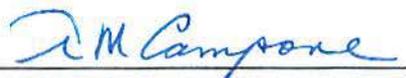
20. In consideration of the undertakings in paragraphs 9 and 10, above, ARB hereby releases LSEOG and LSM and any receivers, trustees, successors and assignees, subsidiary and parent corporations and their members, officers, directors and creditors from any claims the ARB may have based on the circumstances described in paragraph 4, above.

21. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Lake Shore Mojave, LLC

By: 
Richard W. Corey
Executive Officer

By: 
Name: THOMAS M. CAMPONE
Title: VP

Date: 3/11/2017

Date: 3/6/2017

Lake Shore Energy Operations Group, LLC

By: 
Name: THOMAS M. CAMPONE
Title: VP

DATE: 3/6/2017