

## 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 OMC Transport, Inc., with its principal location at 20702 Kenwood Ave, Torrance, California 90502 (collectively, the "Parties," or individually, "Party").

### LEGAL BACKGROUND

- (1) Purpose. 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 §§ 39650-39675.)
- (2) Regulations.
  - a. CARB adopted the *In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks Regulation* (Drayage Truck Regulation) to reduce diesel PM and criteria pollutant emissions from in-use, heavy-duty diesel-fueled vehicles that transport cargo to and from California ports and intermodal rail facilities. (Cal. Code Regs., tit.13, § 2027.)
  - b. CARB adopted the *"Heavy-Duty Diesel Smoke Emission Testing, and Heavy-Duty Vehicle Emission Control Inspections" Regulation* (Cal. Code Regs., tit. 13, §§ 2180-2189) (HDVIP Regulation) to reduce excess smoke emissions from heavy-duty vehicles.
- (3) Regulatory Provisions.
  - a. Owners, operators, and motor carriers of drayage trucks that operate in California must meet all applicable emission requirements and deadlines, register with the Drayage Truck Registry (DTR), as well maintain information in accordance with the records retention requirements. (Cal. Code Regs., tit.13, § 2027.)
  - b. The HDVIP Regulation prohibits the operation of heavy duty vehicles in California that exceed the applicable smoke opacity standards, as well as vehicles that are inadequately maintained or have defective emission control components. It authorizes CARB to inspect on-road heavy-duty vehicles for excess smoke emissions and engine tampering, and to issue citations to the vehicle owner, who must repair the engines exceeding the smoke opacity standards, perform post-repair opacity testing, and submit proof of the repairs along with assessed penalties. Owners of heavy duty vehicles must also affix an Emission Control Label (ECL). (Cal. Code Regs., tit. 13, §§ 2180-2189.)

(4) Penalty Provisions.

- a. Failure to comply with the Drayage Truck Regulatory requirements is a violation of state law that may result in penalties up to ten thousand dollars (\$10,000) for strict liability violations; twenty-five thousand dollars (\$25,000) for negligent violations; and forty thousand dollars (\$40,000) for failing to take corrective action, and seventy-five thousand dollars (\$75,000) for willful and intentional violations, respectively, for each day in which the violation occurs. (Cal. Code Regs., tit.13, § 2027; 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 one thousand eight hundred dollars (\$1,800) for each strict liability violation of the HDVIP Regulation, respectively, for each day in which the violation occurs. (Health & Saf. Code, § 44011.6; Cal. Code Regs., tit.13, § 2185.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, OMC Transport, Inc. was organized under the laws of California as a corporation and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) HDD-2020-0001, which was issued on February 16, 2021. CARB alleges OMC Transport, Inc. violated the Drayage Truck Regulation by owning, operating, and dispatching drayage trucks and failing to comply with the emissions requirements, meet the compliance deadlines, register with DTR, or properly maintain records on three drayage trucks at at BNSF Los Angeles and BNSF City of Commerce, resulting in 80 days of violations, as outlined in Notice of Violation HDD-2020-0001. CARB alleges OMC Transport, Inc. violated the HDVIP Regulation by failing to provide evidence that 3 of its vehicles have ECLs attached to the engines of the heavy-duty vehicles for its fleet of heavy-duty vehicles, resulting in 3 ECL violations, as outlined in Notice of Violation HDD-2020-0001. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against OMC Transport, Inc. for each and every truck involved in the drayage and ECL violations and each day.
- (7) Acknowledgment. OMC Transport, Inc. admits to the facts in paragraphs 1 through 7, 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, OMC Transport, 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 OMC Transport, Inc. for the alleged violations referred to above in the Legal Background and Case Background, and OMC Transport, Inc.'s agreement to complete all terms and conditions set forth below, CARB and OMC Transport, Inc. agree as follows:

- (9) Settlement Amount. OMC Transport, Inc. shall pay a civil penalty of seventeen thousand nine hundred and fifty dollars (\$17,950.00 USD). OMC Transport, Inc. shall make all payments in accordance with the payment schedule in Paragraph 11 (Payment Plan and Schedule).
- (10) Payment Plan and Schedule. Pursuant to this Settlement Agreement, OMC Transport, Inc. shall make payments below, with the first payment due within 30 days of OMC Transport, Inc. receiving notification that the Settlement Agreement has been fully-executed:

<b>Payment Due Date:</b>	<b>In the Amount Of and Payable To:</b>
<b>30 days from notification of signed settlement agreement</b>	<b>\$2,992.00 California Air Resources Board</b>
<b>60 days from notification of signed settlement agreement</b>	<b>\$2,992.00 California Air Resources Board</b>
<b>90 days from notification of signed settlement agreement</b>	<b>\$2,992.00 California Air Resources Board</b>
<b>120 days from notification of signed settlement agreement</b>	<b>\$2,992.00 California Air Resources Board</b>
<b>150 days from notification of signed settlement agreement</b>	<b>\$2,992.00 California Air Resources Board</b>

<b>180 days from notification of signed settlement agreement</b>	<b>\$2,990.00</b>	<b>California Air Resources Board</b>
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- (11) Civil Penalty and Mitigation Payment Method. OMC Transport, 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. OMC Transport, 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 OMC Transport, Inc. in accordance with Paragraph (17) (Notices).
- (12) Emission Control Label (ECL) Reporting. OMC Transport, Inc. shall submit proof of compliance with the ECL requirements to CARB within 45 days from full execution of this Settlement Agreement.
- (13) Other Relief. OMC Transport, Inc. shall not dispatch drayage trucks that are not compliant with the emission standards set forth in the Drayage Truck Regulation or trucks that are not registered with the DTR. CARB reserves the right to audit the dispatch records of OMC Transport, Inc. for compliance with the California Code of Regulations, title 13, section 2027 (Cal. Code Regs., tit. 13 § 2027).
- (14) 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.
- (15) Documents. OMC Transport, Inc. shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, mitigation, and a copy of the Payment Transmittal Forms to the address or email in Paragraph (16) (Notices).
- (16) 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

OMC Transport, Inc. Settlement Agreement  
Notice of Violation: HDD-2020-0001

P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to OMC Transport, Inc.:  
OMC Transport, Inc.  
20702 Kenwood Ave.  
Torrance, California 90502  
omctransport76@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.

- (17) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, OMC Transport, Inc. shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (18) Repeat Violations. OMC Transport, Inc. agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (19) 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 8 pages and 38 paragraphs.
- (20) Binding Effect. This Settlement Agreement binds OMC Transport, 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.
- (21) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (22) 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.

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

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

#### **PENALTY BASIS**

- (34) Per Unit Penalty.
  - a. Drayage Truck Regulation Penalty. The per unit or per vehicle penalty for drayage violations is a maximum of ten thousand dollars (\$10,000) per day under Health and Safety Code section 39674, for violations of the Drayage Truck Regulation. (Cal. Code Regs., tit.13, § 2027.) The penalty of \$17,050 over an unspecified number of days of violation is for three noncompliant drayage trucks. The per unit penalty in this case is approximately \$5683.33 per noncompliant vehicle.
  - b. ECL Penalty. The per unit or per vehicle penalty for ECL violations is a maximum of one thousand eight hundred dollars (\$1,800) per day for each day the vehicle is in violation of the Health and Safety Code section 44011.6 and HDVIP Regulation. (Cal. Code Regs., tit.13, § 2185.) \$300 for first time citation (Cal. Code Regs., tit.13, § 2185(a).) The penalty of \$900 over an unspecified number of days of violation is for 3 noncompliant heavy-duty vehicles without Emission Control Labels. The per unit penalty for the ECL violations is approximately \$300 per noncompliant vehicle.
- (35) Emissions.
  - a. The Drayage Truck provision cited above does 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 trucks did not meet the regulatory requirements, all of the emissions from it were excess and illegal.

- b. The ECL penalty is not being assessed under a provision of law that prohibits the emission of pollution at a specified level.

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

(37) Confidential Business Information. CARB based this penalty in part on confidential business information provided by OMC Transport, 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: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Date: \_\_\_\_\_ 5/13/2021



OMC Transport, Inc. Settlement Agreement  
Notice of Violation: HDD-2020-0001

**OMC Transport, Inc.**

Signature: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: Jorge Guerrero

Title: President

Date: \_\_\_\_\_ 5/11/21 \_\_\_\_\_