

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 Mitsui O.S.K. Lines, Ltd. (MOL), principally located at the Shosen Mitsui Building, 1-1 Toranomom 2-Chrome, Minato-ku, Tokyo, 105-8688 Japan (collectively, the Parties).

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 that may result 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 MOL failed to properly complete the operational requirements of the regulation on voyages into California in that, according to CARB, the vessel *MOL Creation* operated within RCW in violation of this regulation for one day on November 14, 2019.
- (7) MOL acknowledges the aforesaid Recitals 1 through 6, but denies any liability resulting from said allegations.

- (8) In order to resolve these alleged violations, MOL 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 MOL for the violations referred to above, CARB and MOL agree as follows:

- (10) MOL shall sign the Agreement and provide it to CARB by June 19, 2020. This Agreement may be executed in counterparts. Facsimile, electronic, or photocopied signatures shall be considered as valid signatures as of the date hereof.

MOL shall mail or email the executed Agreement in an envelope or email marked confidential by June 19, 2020 to:

Mr. Alex Barber
Air Pollution Specialist
California Air Resources Board
9480 Telstar Avenue, Suite 4
El Monte, California 91731
Alex.Barber@arb.ca.gov

- (11) MOL shall pay the sum of ten thousand dollars (**\$10,000.00 USD**) to the **California Air Resources Board** for deposit in the **Air Pollution Control Fund** for the purpose of carrying out CARB's functions and duties. MOL shall submit the payment along with the enclosed Payment Transmittal Form within **30 calendar days** from full execution of the Agreement to:

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

Payment shall be made by wire transfer transmittal as follows:

State of California Air Resources Board
c/o Bank of America, Inter Branch to 0148
Routing No. 0260-0959-3 Account No. 01482-80005
Notice of Transfer: Edna Murphy Fax: (916) 322-9612
Reference: OGV012320_MOL

MOL shall be responsible for any bank charges incurred for processing the wire transfer.

- (12) The effective date of this Agreement shall be the date upon which both Parties execute this Agreement.
- (13) MOL 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 MOL concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between CARB and MOL concerning the subject matter hereof.
- (15) This Agreement shall apply to and be binding upon MOL 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) For purposes of this Agreement, MOL 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.
- (23) Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement.
- (24) The failure to enforce any provision of this 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 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 Agreement or otherwise provided by law.
- (25) The Parties represent that they have participated fully in the review and drafting of this Agreement; understand and accept all terms; enter into this Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Agreement; have agreed to this 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 Agreement.
- (26) The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Agreement.
- (27) **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 *MOL Creation* operated on fuel within RCW that did not meet the sulfur standard for one day in violation of the regulation. The penalty obtained in this case is \$10,000.00 per day, for a total penalty of \$10,000.00 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. 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 MOL 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.

- (28) MOL acknowledges that CARB has complied with Health and Safety Code section 39619.7 in settling this case. Specifically, CARB has considered all relevant facts, including those listed at Health and Safety Code sections 42403 and 43024; has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate); has identified the provision of law under which the penalty is being assessed; and has considered and determined that this penalty is being assessed under a provision of law that prohibits the operation of any main or auxiliary diesel engines or auxiliary boiler within the RCW on distillate fuel with a sulfur content above 0.1 percent.

- (29) The penalty in this case was also based on confidential settlement communications between CARB and MOL that CARB does not retain in the ordinary course of business. Accordingly, CARB will not release any submissions by MOL that are protected under the Evidence Code to any third party unless required by law.
- (30) In consideration of the payment by MOL, CARB hereby releases MOL and its principals, officers, agents, affiliates, parent companies, subsidiaries, predecessors, and successors from all claims identified in the recitals above.
- (31) Each of the undersigned represents and warrants that he or she has full power and authority to enter into this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Mitsui O.S.K. Lines, Ltd.

By: _____ /S/
(signature)

By: _____ /S/
(signature)

Name: Todd P. Sax, D.Env.

Name: Katsumi Nagata

Title: Chief, Enforcement Division

Title: Chief Executive Representative,
North America, Central America and
Caribbean

Date: 7/15/2020

Date: 16th June, 2020