

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 Hornblower Yachts (Hornblower), with its principal location at Pier 3, The Embarcadero, San Francisco, CA 94111 (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. Regulation. CARB adopted the *Airborne Toxic Control Measure for Commercial Harbor Craft* (CHC Regulation) to reduce diesel PM and criteria pollutant emissions from ocean going vessels. (Cal. Code Regs., tit.17, § 93118.5)
3. Regulatory Provisions. Any person who sells, supplies, offers for sale, purchases, owns, operates, leases, charters, or rents any new or in-use diesel fueled harbor craft that is operated in any of the Regulated California Waters must meet the in-use, reporting, and recordkeeping requirements as set forth in the CHC Regulation.
4. Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to ten thousand dollars (\$10,000) for strict liability violations for each day in which the violation occurs. (Cal. Code Regs., tit.17, § 93118.5; Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., and 42410.)

CASE BACKGROUND

5. Corporate Entity. At all relevant times, Hornblower was organized under the laws of the State of California, and conducted business in the State of California.
6. Allegations. This Settlement Agreement resolves Notice of Violation (NOV) CHC032918_HORNBLOWER, which was issued on March 29, 2018. CARB alleges Hornblower violated the CHC Regulation by failing to comply with the in-use and reporting requirements for the following vessels: Just Dreamin', M/V Hornblower, and Endless Dreams, totaling 8 in-use standard violations and 1 reporting violation, as outlined in NOV CHC032918_HORNBLOWER. CARB alleges that if the allegations described in paragraphs 1 through 6 were

proven, civil penalties could be imposed against Hornblower for each and every day of violation.

7. Acknowledgment. Hornblower admits to paragraphs 1 through 6, but denies any liability resulting from said allegations. Settlement of this matter shall not constitute an admission of liability.
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, Hornblower 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 Hornblower for the alleged violations referred to above in the Legal Background and Case Background, and Hornblower's full execution of the Mitigation Plan set forth below and as an addendum to this Settlement Agreement, CARB and Hornblower agree as follows:

9. Mitigation Plan. Hornblower shall abide by the details and schedule outlined in the Mitigation Plan titled "*Adventure Hornblower Demonstration Project: Reducing Emissions Using Diesel Particulate Filters*" (Plan), Attachment A which is incorporated into this Settlement Agreement by reference. The Plan involves the installation and operation of diesel particulate filters (DPFs) on one main engine and one auxiliary engine on board the vessel Adventure Hornblower. In addition to the details outlined in the Plan, Hornblower shall:
 - a. Maintain operation of the DPFs on board the vessel for the entire useful life of the vessel, unless there is a catastrophic failure of the DPF's or they cause engine malfunction issues.
 - b. Submit monthly records of engine operating hours, for the first two years of operation, to CARB by the 31st of each month; and
 - c. Submit updates on each Action Item by the deadline outlined in the Plan's Schedule and Funding Summary on page 5 of the Plan, including the results of all emissions tests performed.
10. Documents. Hornblower shall promptly email and then mail the original signed and dated Settlement Agreement, and information identified in paragraph 9, subsections (a) through (c) to the following address:

Hornblower Yachts Settlement Agreement
Notice of Violation: CHC032918_HORNBLOWER

California Air Resources Board
Attention: Scott Underhill
Field Operations Branch / Railroad and Marine Enforcement Section
9480 Telstar Avenue, Suite 4
El Monte, California 91731

11. Prohibition Against Financial Benefit. Hornblower has agreed that by implementing the Plan, Hornblower will not receive any direct or indirect financial benefit and that whenever Hornblower publicizes or refers to the Plan or the results of the Plan, Hornblower will state that the Plan is being undertaken as part of the settlement of a CARB enforcement action.
12. Stipulated Penalties. In the event Hornblower fails to implement or fully complete the Plan in accordance with the terms of the Settlement Agreement, CARB shall be entitled to recover the full amount of allowable penalties from Hornblower, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund.
13. Repeat Violations. Hornblower acknowledges that repeat violations could result in increased penalties in the future.
14. Entirety. This Settlement Agreement and attached plan 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 5 pages and 28 paragraphs.
15. Binding Effect. This Settlement Agreement binds Hornblower, 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.
16. Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
17. 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.

18. 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.
19. 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.
20. 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.
21. 26 U.S.C. Section 162(f)(2)(A)(ii) Identification. Hornblower shall not deduct any costs incurred pursuant to this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
22. 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.
23. 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.
24. 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.
25. Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.

26. Counterparts. This Settlement Agreement may be executed in counterparts. 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 Settlement Agreement.

27. Release. In consideration of the full completion of the Plan and all undertakings above, CARB hereby releases Hornblower and its principals, officers, vessels, 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.

28. Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: _____ /S/ _____

Name: _____ Richard W. Corey _____

Title: _____ Executive Officer _____

Date: _____ 6/18/2020 _____

Hornblower Yachts

Signature: _____ /S/ _____

Name: _____ Mitchell Randall _____

Title: _____ Vice President _____

Date: _____ 5/20/2020 _____

Attachment A

Adventure Hornblower Demonstration Project:
Reducing Emissions Using Diesel Particulate
Filters

***Adventure Hornblower* Demonstration Project: Reducing Emissions Using Diesel Particulate Filters**



Adventure Hornblower: This project will install, operate, and test Diesel Particulate Filters (DPF) on existing Tier 3 engines.

Objective

Retrofit emission control devices on diesel engine exhausts on the passenger vessel *Adventure Hornblower* to support a demonstration project for the California Air Resources Board (ARB). The project is designed to demonstrate the efficacy of aftermarket equipment to reduce engine emissions beyond Tier 3 standards. This will allow ARB to better assess the potential impact of pending State regulations aimed at further reducing California Harbor Craft (CHC) emissions. Subject to separate agreement between Rypos and ARB, this also has the potential to serve as a verification project for Rypos' equipment.

The basic outline of procedures for this project envisions the following steps:

- 1) Baseline exhaust emissions test
- 2) Install emission control equipment (retrofit)
- 3) Post-retrofit emissions test
- 4) Engine operation (1000 hours)
- 5) Post-operation emissions test

Background

On March 29, 2018, ARB issued a notice of violation alleging violations of the Airborne Toxic Control Measure for Commercial Harbor Craft at California Code of Regulations (CCR), title 17, section 93118.5 (17 CCR§ 93118.5) by Hornblower Yachts. While ARB has civil remedies available through the State Attorney General's Office or through the local district attorney, it is their policy to offer an opportunity to meet and discuss the circumstances of alleged violations and attempt to resolve the matter short of litigation. After several meetings and various mitigation project proposals, it was agreed Hornblower would fully explore the possibility of installing aftermarket emission controls on a vessel in Southern California as a demonstration project. Bids from three vendors/suppliers were solicited and evaluated. After extensive work with each supplier and a comprehensive analysis, Hornblower proposes installing Rypos Diesel Particulate Filters (DPF) on one main diesel engine and one generator on *Adventure Hornblower*.

**Adventure Hornblower Demonstration Project:
Reducing Emissions Using Diesel Particulate Filters**

Vessel Particulars

Name	<i>Adventure Hornblower</i>
Official Number	999192
Year Built	1994
Location	East Boothbay, Maine
Service	Passenger (Inspected)
Hull Material	Steel
Gross/Net Tonnage	94/64
Length	142.8 ft
Passengers	600
Route Permitted	Limited Coastwise: Pacific Ocean area limited to within 20 mile radius of Point Loma Lighthouse, San Diego, CA.

Main Engine Information

Make	Caterpillar
Model	C32 ACERT
Model Year	2013
Displacement	32.2 liters
Cylinders	12
Rated Brake Horsepower	745
Hour Meter Reading (2/19/20)	Port: 15,734; Stbd: 15,731
Average Annual Hours of Operation	2143 each
U.S. EPA Marine Engine Emission Standard	Tier 3

Generator Engine Information

Make	Caterpillar
Model	C 7.1 ACERT
Model Year	2013
Displacement	7.01 liters
Cylinders	6
Rated Brake Horsepower	175 kW
Hour Meter Reading (2/19/20)	Forward: 14,188; Aft: 9390
Average Annual Hours of Operation	Forward: 2027; Aft: 1341
U.S. EPA Marine Engine Emission Standard	Tier 3

Proposed Retrofit Equipment – Main Engine

Make	Rypos Active Diesel Particulate Filter
Model	RH410-XL
Weight	1200 lbs per unit
Length	82 inches
Diameter	51 Inches
Height	46 inches

**Adventure Hornblower Demonstration Project:
Reducing Emissions Using Diesel Particulate Filters**

Proposed Retrofit Equipment - Generator

Make	Rypos Active Diesel Particulate Filter
Model	RH408-L
Weight	650-750 lbs per unit
Length	60-76 inches
Diameter	30 Inches
Height	Not specified

The enclosed specification sheets have additional details.

Work Plan

Upon ARB's acceptance of this proposal, we will proceed with the following Work Plan:

Phase 1: Baseline Exhaust Emission Test

Conducted by Rypos or an independent third party as part of ARB's verification procedure, this establishes engine emission levels before any equipment is installed. It can be done any time before installation (Phase 3) and requires taking the vessel out of service to set up/calibrate instrumentation and conduct emissions tests under load conditions. While Rypos is responsible for the testing, Hornblower will provide a vessel crew and fuel to get underway.

Roles and Budgets

- Hornblower:
 - In-house labor: \$1,000
 - Fuel (at \$4/gal): \$1,750

Phase 2: Plan Review/Approval

Due to the added weight and use of equipment that impacts vital systems, regulatory approval from the U.S. Coast Guard is required. Engineering calculations and plans will be prepared by a naval architect and submitted to the U.S. Coast Guard Marine Safety Center for approval before installation begins.

Roles and Budgets

- Naval Architect: Prepare engineering calculations and plans; submit to U.S. Coast Guard Marine Safety Center for approval regarding stability and all proper modifications/arrangements for installation of DPF and components (30 days).
 - Billable hours: \$5000
- Hornblower: Project management.
 - In-house labor: \$1000
- Coast Guard Marine Safety Center: Review and approval of calculations/plans (30 days).

Phase 3: Acquisition and Installation

Once plans are approved and DPFs and their components are acquired, they will be installed. This requires hiring an outside vendor to physically install the equipment and a marine electrician to ensure power from the vessel's generators is properly connected. Rypos has also expressed the need to include backpressure relief (subject to ARB approval) and data loggers to

**Adventure Hornblower Demonstration Project:
Reducing Emissions Using Diesel Particulate Filters**

continually gather emissions data. The vessel must be taken out of service in order to complete the installation process. Due to its current schedule, the vessel's next availability would be May 2020 after the conclusion of whale watching season. Estimated time to complete installation is one week. Technical plans and drawings approved by the Coast Guard Marine Safety Center are subject to the satisfaction of the local Officer in Charge, Marine Inspection (OCMI) who will provide a Marine Inspector to witness installation and any subsequent testing.

Roles and Budgets

- Hornblower: acquisition of DPF and components; installation labor & materials; electrical wiring, conduit & fitting; project management.
 - DPFs and components (Main): \$40,850
 - DPFs and components (Generator): \$22,650

 - Backpressure relief (Main): \$ 5,000
 - Backpressure relief (Generator): \$ 5,000
 -
 - Data loggers (Main): \$ 5,000
 - Data loggers (Generator): \$ 5,000
 -
 - Installation (labor & materials): \$15,000*
 - Electrical Installation: \$10,000*
 - In-house labor: \$ 7,500*
- Rypos: Technical oversight.
- U.S. Coast Guard Sector San Diego: Final inspection, testing, and acceptance of DPF installation.

Phase 4: Commissioning and Post-Retrofit Emission Test

After installation, Rypos will provide a field engineer to conduct on-site commissioning which takes approximately one day. It only requires running the engines, but not at load so the vessel can remain at the pier. This is separate from ARB's verification testing. Similar to Phase 1 and subject to separate agreement between ARB and Rypos, Rypos is responsible for this test, but Hornblower will provide a vessel crew and fuel to get underway.

Roles and Budgets

- Hornblower:
 - Rypos Commissioning: \$3,000
 - In-house labor: \$3,500
 - Fuel (at \$4/gal): \$2,250

Phase 5: Operation

*Cost estimate based on engine room installation. If it is determined DPFs must be installed elsewhere, significant cost increases should be expected.

**Adventure Hornblower Demonstration Project:
Reducing Emissions Using Diesel Particulate Filters**

Hornblower will operate the vessel's engines in service for approximately 1000 hours. Based on Adventure Hornblower's recent history, an estimate of six months to achieve this is reasonable.

Roles and Budgets

- N/A

Phase 6: Post-Operation Emission Test

This is a durability test to ensure the equipment is still functioning as intended after 1000 hours of engine run time. Similar to Phases 1 & 4 and subject to separate agreement between ARB and Rypos, Rypos is responsible for this test, but Hornblower will provide a vessel crew and fuel to get underway.

Roles and Budgets

- Hornblower:
 - In-house labor: \$1,000
 - Fuel (at \$4/gal): \$1,750

Schedule and Funding Summary:

Action Item	Schedule	Cost
1. Baseline Emissions Test	August 2020 (assuming SIP lifted)	\$2,750
2. Plan Review/Approval	September - November 2020	\$6,000
3.a. Acquire DPF & Components (Main)	January 2021	\$40,850
3.b. Acquire DPF & Components (Gen)	January 2021	\$22,650
4. Acquire Backpressure Relief	February 2021	\$10,000
5. Acquire Data Loggers	February 2021	\$10,000
4. Installation*	April 2021	\$32,500
5. Commissioning	May 2021	\$1,500
6. Post-Retrofit Emission Test	June 2021	\$2,750
7. Operation (1000 hours)	June 2021 – December 2021	N/A
8. Post-Operation Emissions Test	December 2021	\$2,750
TOTAL		\$131,750
Rypos		\$22,650
Hornblower		\$109,100

We look forward to discussing this project and hopefully moving forward immediately.

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Encl: (1) Rypos Spec Sheet: Active Diesel Particulate Filter RH410-XL
(2) Rypos Spec Sheet: Active Diesel Particulate Filter RH408-L

*Installation timeline and costs are estimates that can be finalized after Phase 2 is complete.