

## **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 Wan Hai Lines (USA) Ltd. (Wan Hai), with its principal location at 17200 North Perimeter Drive Suite 200, Scottsdale, Arizona 85255 (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). (Health & Saf. Code §§ 39650-39675.) CARB has determined that particulate matter (PM) from diesel-fueled engines is a TAC.
- (2) Regulation. CARB adopted the *Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated On Ocean-Going Vessels At-Berth in a California Port* (At-Berth Regulation) to reduce diesel PM and criteria pollutant emissions from ocean-going vessels while these vessels are docked at berth at a California port. (Cal. Code Regs., tit.17, § 93118.3.)
- (3) Regulatory Provisions. Any person who owns, operates, charters, rents, or leases any United States (U.S.) or foreign-flagged container vessel, passenger vessel, or refrigerated cargo vessel that visits a California port is required to meet the operational time limit during 80 percent of each fleet's visits to a California port, reduce the baseline fleet power generation (BFPG) by 80 percent for each fleet, submit statements of compliance by March 1 following each compliance year, and maintain records. (Cal. Code Regs., tit.17, §§ 93118.3(d), and (g).)
- (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; twenty-five thousand dollars (\$25,000) for negligent violations; 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 a violation occurs. (Health & Saf. Code, §§ 39674, 39675, 42400 et seq., 42400.1, 42400.2, 42402 et seq., 42402.3, and 42410; Cal. Code Regs., tit.17, § 93118.3.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, Wan Hai was organized under the laws of California as a private limited company, and conducted business in the State of California.

- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) SP031321\_WANHAI, which was issued on October 14, 2021. In that NOV, CARB alleges that Wan Hai violated the At-Berth Regulation by (1) failing to achieve the baseline power reduction requirements, and (2) failing to achieve the operational time limit requirements, for a total of 1,945 violations, as outlined in Notice of Violation SP031321\_WANHAI. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against Wan Hai for each violation.
- (7) Acknowledgment. Wan Hai admits to the facts in paragraphs 1 through 6, 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, Wan Hai has taken, or agrees to take, the actions enumerated in the Terms and Conditions section of this Settlement Agreement, Paragraphs 9 through 33. Further, CARB accepts this Settlement Agreement in termination and full settlement of the allegations described in paragraphs 1 through 6.

## **TERMS AND CONDITIONS**

In consideration of CARB not filing a legal action against Wan Hai for the alleged violations referred to in the Legal Background and Case Background, above, and of Wan Hai's agreement to complete all terms and conditions set forth below, CARB and Wan Hai agree as follows:

- (9) Settlement Amount. Wan Hai shall pay CARB a civil penalty of three hundred forty thousand, three hundred and seventy five dollars (\$340,375.00 USD); and agrees to fund the Supplemental Environmental Project (SEP) entitled "Installation of Air Filtration Systems – LAUSD Murchison" (LAUSD SEP) in the amount of forty thousand, seven hundred and seventy-seven dollars and fifty-four cents (\$40,777.54 USD), and the Supplemental Environmental Project entitled "Installation of Air Filtration Systems in Schools in Oakland – Phase 3" (Oakland SEP) in the amount of two hundred ninety-nine thousand, five hundred and ninety-seven dollars and forty-six cents (\$299,597.46 USD), consistent with CARB's SEP Policy, for a total settlement amount of six hundred eighty thousand, seven hundred and fifty dollars (\$680,750.00 USD). Wan Hai shall make all payments within 30 calendar days from the date CARB notifies Wan Hai of the full execution of this Settlement Agreement.

- (10) Civil Penalty Payment Method. Wan Hai shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Wan Hai is responsible for all payment processing fees. Wan Hai shall submit the Payment Transmittal Form CARB provides to Wai Han with its civil penalty payment, to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions, and to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to Wan Hai in accordance with Paragraph 16 (Notices).
- (11) SEP Payment Method(s). Wan Hai shall fund the LAUSD SEP and Oakland SEP by wire transfer, credit card, or check, payable to IQAir Foundation, the SEP implementer/recipient, using instructions provided separately by CARB in two different Payment Transmittal Forms, one for each SEP. Wan Hai is responsible for all payment processing fees. Wan Hai shall also submit the Payment Transmittal Form CARB provides to Wai Han with each of its SEP payments, to ensure proper application. Should payment instructions change, CARB will provide notice to Wan Hai in accordance with Paragraph 16 (Notices).
- (12) Prohibition Against Financial Benefit. Wan Hai has agreed that by funding the LAUSD SEP and Oakland SEP, Wan Hai will not receive any direct or indirect financial benefit, and that whenever Wan Hai publicizes or refers to the SEPs or the results of the SEPs, Wan Hai will state that the SEPs are being undertaken as part of the settlement of a CARB enforcement action.
- (13) Assignment of Rights. Wan Hai hereby assigns to CARB any and all rights Wan Hai, and any of its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, has regarding the LAUSD SEP and Oakland SEP against IQAir Foundation, and any of its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations. Accordingly, in the event the SEP Recipient/Administrator does not fully implement or complete the LAUSD SEP or Oakland SEP in accordance with the terms of the SEP Agreements, CARB shall be entitled to recover the full amount of the SEPs from the SEP implementer, 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.
- (14) Compliance Plan. Wan Hai shall implement the Compliance Plan as approved by CARB, and within the timeframe laid out in the Compliance Plan. The Compliance Plan, attached as Attachment A to this Settlement Agreement, is a confidential trade secret document that is hereby incorporated herein, but will not be released to the public.

- (15) Documents. Wan Hai shall promptly email or mail the signed and dated Settlement Agreement, with a copy of proof of payment of the penalty and SEPs, and a copy of the Payment Transmittal Forms to CARB at 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 applicable Party at the address or email below:

As to CARB:

California Air Resources Board  
Enforcement Division / Settlement Agreements  
Field Operations Branch / Railroad and Marine Enforcement Section  
Mae Colcord, Air Pollution Specialist  
4001 Iowa Avenue  
Riverside, California 92507  
Settlement\_Agreement@arb.ca.gov

As to Wan Hai:

Wan Hai Lines (USA) Ltd.  
Tenny Hsieh, President  
17200 North Perimeter Drive, Suite 200  
Scottsdale, Arizona 85255  
tenny.hsieh@wanhai.com

Any Party may, by five days' 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, Wan Hai shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (18) Repeat Violations. Wan Hai agrees to comply with all CARB 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. This Settlement Agreement consists of 8 pages and 37 paragraphs.

- (20) Binding Effect. This Settlement Agreement binds Wan Hai, and any of its 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, Wan Hai 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 from thereafter 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 or under this Settlement Agreement.
- (31) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile, or photocopied signatures shall be considered valid signatures.
- (32) Release. In consideration of Wai Han's full completion of the civil penalty and SEP payments, and all other undertakings above, CARB hereby releases Wan Hai 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. The per-unit penalty in this case is a maximum of ten thousand dollars (\$10,000) per day, per violation under Health and Safety Code section 39674, for violations of the At-Berth Regulation. (Cal. Code Regs., tit.17, § 93118.3.) The penalty of \$680,750 over an unspecified number of days of violation is for 1,945 violations. The per-unit penalty in this case is approximately \$350 per violation.
- (35) Emissions. The provisions cited above do not 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 fleet did not meet the regulatory requirements, all of the emissions were excess and illegal.

- (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 the public health, safety and welfare; the nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; the innovative nature and 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 with consideration of 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 Wan Hai 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: Richard W. Corey

Title: Executive Officer

Date: February 22, 2022

**Wan Hai Lines (USA) Ltd.**

Signature: /S/

Name: Tenny Hsieh

Title: President

Date: January 31, 2022