

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 Matson Navigation Company, Inc. (Matson), with its principal location at 1411 Sand Island Parkway, Honolulu, Hawai'i 96819 (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 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 (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, reduce the baseline fleet power generation (BFPG) by 80 percent for each fleet, as well as 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 nine hundred ten dollars (\$10,910.00 USD) for strict liability violations for each day in which the violation occurs (Cal. Code Regs., tit.17, § 93118.3.); Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., and 42410).

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Matson was organized under the laws of Hawai'i as a stock corporation and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) SP030121_MATSON, which was issued on November 10, 2021. CARB alleges Matson 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 three years (2020-2022), resulting in 2,910 violations. CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against Matson for each and every megawatt hour involved in the violations and each day.

- (7) Acknowledgment. Matson 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, Matson 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 Matson for the alleged violations referred to above in the Legal Background and Case Background, and Matson's agreement to complete all terms and conditions set forth below, CARB and Matson agree as follows:

- (9) Settlement Amount. Matson shall pay a civil penalty of two million two hundred one thousand eight hundred dollars (\$2,201,800.00 USD). Matson shall make all payments within 30 calendar days from the date CARB notifies Matson of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Matson 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. Matson 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 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 Matson in accordance with Paragraph 13 (Notices).
- (11) Other Relief. Matson shall adhere to the CARB-approved compliance plan that Matson, through its counsel, submitted to CARB on March 23, 2023, which is incorporated by reference, herein.
- (12) Documents. Matson shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, a copy of the Payment Transmittal Form, to the address or email in Paragraph 13 (Notices).
- (13) 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
Field Operations Branch / Railroad and Marine Section
P.O. Box 55009
Riverside, California 92517-0009
Settlement_Agreement@arb.ca.gov

As to Matson:

Matson Navigation Company, Inc.
1411 Sand Island Parkway
Honolulu, Hawai'i 96819
cmukai@matson.com

As to Matson's Legal Representation:

Kevin Poloncarz
Covington & Burlington LLP
415 Mission Street, Suite 5400
San Francisco, California 94105
kpoloncarz@cov.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.

- (14) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Matson shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (15) Repeat Violations. Matson agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (16) 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 34 paragraphs.
- (17) Binding Effect. This Settlement Agreement binds Matson, 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.

- (18) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (19) 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.
- (20) 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.
- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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.
- (25) 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.

- (26) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (27) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (28) Release. In consideration of full payment of the civil penalty and all other undertakings above, CARB hereby releases Matson 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. For the avoidance of doubt, any failure to comply with the Control Measure for Ocean-Going Vessels At Berth (Cal. Code Regs., tit.17, §§ 93130-93130.22) occurring in 2023 or thereafter shall not vitiate or annul the release for the violations addressed by this Settlement Agreement.
- (29) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (30) Per Unit Penalty. The per unit penalty in this case is a maximum of ten thousand nine hundred and ten dollars (\$10,910.00 USD) 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 \$2,201,800 over an unspecified number of days of violation is for 2,910 total violations. The per unit penalty in this case is \$650.00 per violation in 2020, \$750.00 per violation in 2021, and \$850.00 per violation in 2022.
- (31) 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.
- (32) 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.

- (33) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Matson or confidential settlement communications.
- (34) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
 - (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Matson with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Matson with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Matson to CARB.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
 - (v) Any criminal liability.
 - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
 - (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Matson shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-

splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case. For the avoidance of doubt, this Settlement Agreement constitutes a full and complete resolution of the violations addressed herein and, so long as Matson has satisfied its obligations under this Settlement Agreement, CARB shall not maintain a claim related to the violations addressed herein.

- (d) This Settlement Agreement does not limit or affect the rights of Matson or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Matson, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Matson is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Matson's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Matson's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Steven S. Cliff, Ph.D.

Title: Executive Officer

Date: April 14, 2023

Matson Navigation Company, Inc.

Signature: /S/

Matson Navigation Company, Inc. Settlement Agreement
Notice of Violation: SP030121_MATSON

Name: John W. Sullivan

Title: Senior Vice President, Vessel Operations and Engineering

Date: March 30, 2023