

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the State of California Air Resources Board ("CARB") 1001 I Street, Sacramento, CA 95814, and Chardonnay Sailing Charters, LLC. ("Chardonnay Sailing") with its principal place of business located at 704 Soquel Ave Suite A, Santa Cruz, CA 95062 (collectively, the "Parties").

RECITALS

- (1) Health and Safety Code (H&SC), Section 39650-39675 mandates the reduction of the emission of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, CARB identified particulate matter (PM) from diesel-fueled engines as a TAC.
- (2) Commercial Harbor Craft (CHCs) are powered by diesel fueled engines that emit toxic PM. CHCs are controlled under Title 17, California Code of Regulations (CCR), section 93118.5 (hereinafter the "CHC Regulation").
- (3) The purpose of this regulation is to reduce diesel PM, oxides of sulfur (SO_x), and oxides of nitrogen (NO_x) from diesel propulsion and auxiliary engines on CHCs that operate in Regulated California Waters (RCW). This section implements provisions of the Goods Movement Emission Reduction Plan, adopted by CARB in April 2006, to reduce emissions and health risk from ports and the movement of goods in California.
- (4) The CHC Regulation applies to any person who conducts business in California, who sells, supplies, offers for sale, purchases, owns, operates, leases, charters, or rents any new or in-use diesel fueled CHC that is operated in any of the RCW.
- (5) Sections 93118.5 (e)(1) thru (6) of the CHC Regulation sets forth the various fuel and emission requirements for CHCs subject to this regulation and section 93118.5(6)(C) of the CHC Regulation sets forth the compliance methods for meeting in-use engine and vessel schedules for Tier 2 and Tier 3 standards. Among those methods is an allowance to operate a Tier 0 or Tier 1 engine past the engine's compliance date provided the engine is not in-use for more than 300 hours per calendar year. The low use path requires the explicit approval of CARB's Executive Officer (EO).
- (6) Failure to comply with the requirements of the CHC Regulation is a violation of state law that may result in penalties. H&SC sections 39674, 39675, 42400 et seq., 42402 et seq., and 42410 authorize civil penalties for the violation of the programs for the regulation of TACs not to exceed ten thousand dollars (\$10,000.00), respectively, per engine for each day in which the violation occurs.

- (7) CARB, with the cooperation of Chardonney Sailing, has documented that Chardonney Sailing located in Santa Cruz, CA, conducts business in California and operates new or in-use diesel fueled CHC in RCW.
- (8) CARB alleges that Chardonney Sailing, after receiving approval to operate their Tier 0 engine under the low-use restriction, exceeded the 300-hour limit by 95 hours the year after receiving the low-use approval.
- (9) CARB alleges that if the allegations described in the above recitals were proven, civil penalties could be imposed against Chardonney Sailing as provided in H&SC sections 39674, 39675, 42400 et seq., 42402 et seq., and 42410 for each and every engine involved in the violation each day.
- (10) Chardonney Sailing admits to recital paragraphs 1 through 8, but denies any liability resulting from said allegations.
- (11) In order to resolve these violations, Chardonney Sailing has taken, or agreed to take, the actions enumerated under "Terms, Conditions, and Release" below. CARB accepts this Settlement Agreement in termination and settlement of this matter.
- (12) 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 violations, and voluntarily agree to resolve this matter by means of this Settlement Agreement.

TERMS, CONDITIONS, AND RELEASE

In consideration of CARB not filing a legal action against Chardonney Sailing for the violations referred to above, CARB and Chardonney Sailing agree as follows:

- (13) Upon execution of this Settlement Agreement, Chardonney Sailing shall pay the sum of **five thousand, five hundred dollars (\$5,500.00 USD)** by June 3, 2019 as follows:
 - \$5,500 USD to the Air Pollution Control Fund
- (14) Chardonney Sailing shall submit payment to the **Air Pollution Control Fund** in the amount of **five thousand, five hundred dollars (\$5,500.00 USD)** along with the enclosed Settlement Agreement Payment Transmittal Form (Attachment A) to:

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

- (15) Chardonay Sailing shall mail the (a) original fully executed and dated Settlement Agreement, (b) a copy of the Settlement Agreement Payment Transmittal Form (Attachment A), (c) a copy of the check or wire transfer to the Air Pollution Control Fund, in an envelope marked confidential to:

Michael Sekigahama
Air Pollution Specialist
California Air Resources Board
Enforcement Division
8340 Ferguson Ave
Sacramento, California 95828

- (16) If the Attorney General files a civil action to enforce this Settlement Agreement, Chardonay Sailing shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (17) Chardonay Sailing shall not violate any provision of CCR, Title 17, section 93118.5 and H&SC sections 39650-39675. Prior to execution of this Agreement, Chardonay Sailing has brought all CHC equipment alleged by CARB to have been in violation and cited in the Notice of Violation #011719CHA issued April 2, 2019, into compliance with the requirements of the CHC Regulation.
- (18) Chardonay Sailing is permitted to run the vessel, Chardonay 2, under the low-use compliance method described in the CHC Regulation until January of 2020 provided they also comply with the all terms of this agreement. If Chardonay Sailing's vessel, the Chardonay 2's in-use hours exceed 300 for 2019 and/or Chardonay Sailing fails to comply with paragraphs 19 – 21 additional daily penalties will be issued, and CARB may enforce the terms of the agreement in a court of law.
- (19) Chardonay Sailing shall report monthly to CARB's Enforcement Division to the individual identified in paragraph 15, their low use hours for the Yanmar 4LH-HTE (Serial Number 20303) engine on the Chardonay 2. The report shall consist of a photo of the hour meter on the last day of every month and a copy or scan of the hour log for that same month. The monthly report will be due by the 15th day of the following month (Ex. June's report would be due by July 15th). This reporting requirement will go into effect the same month this agreement is signed and will remain in effect until the vessel is repowered with a Tier 3 engine in January of 2020.

- (20) From the month of January 2019 to the month this agreement is signed Chardonnay Sailing will submit a copy of their hour meter logs up to but not including the month they must begin reporting for per paragraph 19.
- (21) Chardonnay Sailing will purchase a Tier 3 engine for the purpose of repowering the vessel, Chardonnay 2, and send a copy of the invoice or purchase order to the individual identified in paragraph 15 within 30 days of the purchase. Chardonnay Sailing will repower the Chardonnay 2 with this engine no later than January of 2020.
- (22) Now therefore, in consideration of the payment on behalf of Chardonnay Sailing to the California Air Pollution Control Fund, CARB hereby releases Chardonnay Sailing and its principals, officers, agents, predecessors and successors from any and all claims for past violations of H&SC sections 39650-39675, and the CHC Regulation, the CARB may have based on the circumstances described in the above Recitals.

GENERAL PROVISIONS

- (23) This Agreement settles all violations of those provisions of the H&SC and CCR that are subject to 011719CHA issued April 2, 2019. Nothing in this Agreement shall constitute or be construed as a satisfaction or release from liability for any violations of law other than those subject to the NOV 2017-CHC-001 dated June 8, 2017.
- (24) This Agreement constitutes the entire agreement and understanding between CARB and Chardonnay Sailing concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements of any kind or nature, whether written or oral, between CARB and Chardonnay Sailing concerning the subject matter hereof.
- (25) The payment obligation and the release obligations under this Agreement shall apply to and be binding upon Chardonnay Sailing and its officers, directors, receivers, trustees, employees, successors and assignees, members, parent corporations, 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.
- (26) The terms and conditions set forth in this Agreement shall remain valid and enforceable notwithstanding any future violations that may occur.
- (27) No agreement to modify, amend, extend, 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.

- (28) Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (29) The headings in this Agreement are not binding and are for reference only and do not limit, expand, or otherwise affect the contents of this Agreement.
- (30) 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.
- (31) This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
- (32) Chardonnay Sailing agrees not to assert laches as a defense.
- (33) 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.
- (34) 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), which provides an exception from discharge for any debt to the extent that such debt is for a fine, penalty, or forfeiture payable to and for benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.
- (35) The failure of any Party 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.
- (36) This Agreement may be executed in counterparts or duplicate originals, all of which shall be regarded as one and the same instrument, and which shall be the official and governing version in the interpretation of this Agreement. This Agreement may be executed by PDF or facsimile signatures and such signatures shall be deemed to bind each Party as if they were original signatures.
- (37) The effective date of this Agreement shall be the date upon which Chardonnay Sailing executes this Agreement.
- (38) Each of the undersigned represent that he or she has authority to enter into this

Agreement.

PENALTY BASIS

- (39) Pursuant to H&SC section 39619.7, CARB must provide information on the basis for the penalties it seeks. The pertinent 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 vessel penalty.

The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in H&SC sections 42403 and 43024.

Chardonnay Sailing received a low-use approval from CARB for the vessel, Chardonnay 2, in December of 2017. An inspection of the vessel in January of 2019 revealed the engine was in-use over 300 hours for the year 2018.

The maximum per unit penalty is up to \$10,000.00 USD per day for strict liability violations pursuant to H&SC section 39674. The penalty obtained in this case is a total of \$5,500.00 USD with a per unit penalty of \$5,500.00 per propulsion engine per year of violation.

Penalties must be set at levels sufficient to discourage violations. This penalty was calculated by considering all factors specified in H&SC sections 42403 and 43024. In particular, the penalty reflects penalties obtained in other CHC violation cases. The penalty was discounted based on the fact that this was a first time violation and Chardonnay Sailing made diligent efforts to comply and to cooperate with the investigation.

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 H&SC section 39674 because Chardonnay Sailing failed to comply with Section 93118.5 of the CHC Regulation, which was adopted under H&SC section 39600 et seq.

Whether the penalty being assessed is 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 Chardonnay Sailing vessel did not meet the

CHC regulatory requirements by exceeding the low-use hour limit by 95 hours, all emissions from those 95 hours were excessive and illegal.

This penalty is being assessed under a provision of law that prohibits emission of pollutants at a specific level. However, the individual emission rate of the engine is not known and is not practical for CARB to quantify the excess emissions.

- (40) Chardonay Sailing acknowledges that CARB has complied with H&SC section 39619.7 in settling this case. Specifically, CARB has considered all relevant facts, including those listed at H&SC sections 42403 and 43024; has explained the manner in which the penalty amount was calculated (including a per unit or per vessel penalty, if appropriate); and has identified the provision of law under which the penalty is being assessed.
- (41) 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 costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days considered together with the complete circumstances of this case. The penalty also reflects CARB's assessment of the relative strength of its case against Chardonay Sailing, the desire to avoid the uncertainty, burden, and expense of litigation, to obtain swift compliance with the law, and to remove any unfair advantage that Chardonay Sailing may have secured from its actions. Penalties in future cases might be smaller or larger on a per unit basis.

STIPULATED CONSENT JUDGMENT

- (42) The Parties stipulate to the entry of a Consent Judgment if Chardonay Sailing defaults on any of the terms and conditions of this Agreement and hereby waives the right to challenge a Consent Judgment based on the terms of this Agreement. Ten (10) calendar days before declaring a default of the terms and conditions of this Agreement, CARB shall first provide Chardonay Sailing written notice of the claimed default and request to cure.
- (43) The Consent Judgment does not constitute evidence of an admission by Chardonay Sailing regarding any issue of law or fact alleged in the Agreement but sets forth the obligations of Chardonay Sailing and constitutes the complete, final, and exclusive agreement between CARB and Chardonay Sailing.
- (44) CARB expressly reserves the right to bring an enforcement action based on violations of law not covered in this Agreement and to seek whatever fines,

penalties, or remedies provided by law, including injunctive relief.

- (45) In the event CARB seeks Consent Judgement based on Chardonay Sailing's default under this Agreement, the Parties agree to the following:
- a. Superior Court of California, County of Sacramento (Court) has jurisdiction over the Parties and of the subject matter of this action;
 - b. Venue is proper in this Court;
 - c. The Court has personal jurisdiction over Chardonay Sailing for purposes of enforcing the terms of the Consent Judgment; and
 - d. Obligations under this Agreement shall be deemed the terms and conditions of the Consent Judgment.

** Signatures are on the Following Page.*

THE UNDERSIGNED HAVE READ THE TERMS OF THE FOREGOING SETTLEMENT AGREEMENT AND FULLY UNDERSTAND AND AGREE TO ALL OF THE TERMS.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

By: _____

Name: Todd P. Sax, D.Env.
Title: Chief, Enforcement
Date: 5/22/19

Chardonay Sailing Charters, LLC

By: _____

Name: Jim Beauregard
Title: owner
Date: May 13, 2019