

SETTLEMENT AGREEMENT

This Settlement Agreement and Release (Agreement) is entered into between the California Air Resources Board (CARB), with a principal location at 1001 I Street, Sacramento, California 95814; and MSC Mediterranean Shipping Company, S.A. (MSC) with a principal location at 12-14 Chemin Rieu, 1208 Geneva, Switzerland (collectively, the Parties).

I. RECITALS

- (1) Health and Safety Code (H&SC) section 39650-39675 (H&SC §§ 39650-39675) mandates 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 (PM) from diesel-powered engines as a TAC.
- (2) CARB has promulgated an Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated On Ocean-Going Vessels At-Berth in a California Port (At-Berth Regulation), which is codified at California Code of Regulations (CCR), title 17, section 93118.3 (17 CCR § 93118.3).
- (3) Pursuant to 17 CCR § 93118.3 (b), the At-Berth Regulation applies to "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."
- (4) For the 2014 compliance year, vessel fleets that visited ports in California were required to be in compliance with the in-use operational requirements by plugging into shore power for at least half of the fleets visits, and to reduce the baseline fleet power generation (BFPG) by 50% as set forth in 17 CCR § 93118.3 (d). The calculation methodologies for determining compliance with the At-Berth Regulation are set forth in 17 CCR § 93118.3 (e).
- (5) The responsible official is required to provide annual statements of compliance to CARB by March 1 of each year and maintain records at a central location as set forth in 17 CCR § 93118.3 (g)(1).
- (6) Under 17 CCR § 93118.3 (h)(2), any failure to meet requirements "shall constitute a single, separate violation...for each hour that a person operates the auxiliary diesel engine until such provision, prohibition, limit, standard, criteria, or requirement has been met."
- (7) CARB, with the cooperation from MSC, has documented that MSC failed to achieve the baseline power reduction requirement and failed to achieve the applicable percentage of visits as specified in 17 CCR § 93118.3 (d)(1)(A).

- (8) Failure to meet the requirements of the regulation is a violation of State Law resulting in penalties. H&SC sections 39674, 39675, 42400 et seq., 42402 et seq., and 42410, authorizes civil or administrative penalties not to exceed \$1,000.00 or \$10,000.00 for each day that a violation occurred.
- (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 violations described above, and voluntarily agree to resolve this matter by means of this Agreement.

II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against MSC for the violations described above, CARB and MSC agree as follows:

- (10) The Parties shall exchange signed copies of this Agreement. This 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 Agreement.

MSC shall mail the original executed Agreement in an envelope marked confidential to:

Rebecca Geyer, Air Pollution Specialist
California Air Resources Board
8340 Ferguson Blvd.
Sacramento, CA 95828

CARB shall mail a copy of the fully executed Agreement to:

Mr. Claudio Bozzo
Chief Operating Officer
MSC MEDITERRANEAN SHIPPING COMPANY S.A.
12-14 Chemin Rieu, 1208 Geneva
Switzerland

- (11) Upon execution of this Agreement, MSC shall pay the sum of **six hundred thirty thousand, six hundred twenty-five dollars (\$630,625.00)** USD no later than October 15, 2018, as follows:

- \$630,625.00 USD to the California Air Pollution Control Fund

MSC Settlement Agreement
RMES092915-SP

MSC shall submit the payment along with the enclosed Settlement Agreement Payment Transmittal Form to:

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

- (12) MSC shall comply with all requirements of the At-Berth Regulation (17 CCR § 93118.3).
- (13) This Agreement constitutes the entire agreement and understanding between CARB and MSC concerning the subject matter hereof, and supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between CARB and MSC concerning the subject matter hereof.
- (14) The terms of this Agreement shall be binding upon MSC 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.
- (15) The terms and conditions set forth in this Agreement shall remain valid and enforceable notwithstanding any future violations that may occur.
- (16) The effective date of this Agreement shall be the date upon which MSC executes this Agreement.
- (17) 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.
- (18) This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
- (19) MSC agrees not to assert laches as a defense.
- (20) 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 remains in full force and effect.
- (21) 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.

- (22) 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.
- (23) It is further agreed that the penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7).
- (24) In the event MSC fails to pay on time, MSC shall pay all costs associated with collection of the penalties consistent with Government Code § 12513.1.
- (25) 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.
- (26) 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.

III. PENALTY DETERMINATION

- (27) Pursuant to H&SC 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 H&SC section 43024.

The per unit penalty in this case is a maximum of \$10,000 per day for strict liability violations under H&SC 39674 for each hour that a person operates the auxiliary diesel engines at a California port in violation of the At-Berth Regulation. In 2014, MSC's vessels operated at the ports of Long Beach and/ Los Angeles, and Oakland and failed to plug the vessels into shore power for at least half of the visits, and to reduce the BFPG by 50%, resulting in a shortfall of 3,027 MWhs, in violation of the At-Berth Regulation.

This penalty was calculated by considering all factors specified in H&SC sections 42403 and 43024, including the fact that MSC made significant investments in an effort to comply with the At-Berth Regulation, there were factors beyond the reasonable control of MSC that contributed to the violation, MSC was in compliance with the At-Berth Regulation in subsequent

years, converted its California fleet to include 100% shore power equipped new build vessels, and MSC cooperated 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 MSC failed to comply with the At-Berth Regulation (17 CCR § 93118.3), which was adopted under the authority of H&SC sections 39600, 39601, 39650, 39658, 39659, 39666, and 41511.

Whether the 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.

The ATCM does not prohibit emissions above a specified level, but does impose in-use operational requirements for any person who owns, operates, charters, rents, or leases any U.S. or foreign flagged container vessel, passenger vessel, or refrigerated cargo vessel that visits a California port. MSC operated vessels that visited California ports without complying with the in-use operational requirements and as a result, emitted excess PM and oxides of nitrogen (NOx). All of the emissions stemming from the violation were excess and illegal.

- (28) MSC acknowledges that CARB complied with H&SC section 39619.7 in prosecuting or settling this case. Specifically, CARB has considered all relevant facts, including those listed at H&SC section 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 emission of pollutants at a specified level.
- (29) 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 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 MSC, 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 MSC may

have secured from its actions. Penalties in future cases might be smaller or larger on a per unit basis.

- (30) The penalty in this case was based in part on confidential business information provided by MSC that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and MSC that CARB does not retain in the ordinary course of business. Accordingly, CARB will not release any submissions by MSC that are protected under the Evidence Code to any third party unless required by law.
- (31) Now therefore, in consideration of the payment on behalf of MSC to CARB, for deposit into the California Air Pollution Control Fund, CARB hereby releases MSC and its principals, officers, agents, insurers, attorneys, predecessors, directors, receivers, trustees, employees, assignees, parent corporations, members, liquidators, and successors from claims for violations of the At-Berth Regulation alleged in recital paragraph (8).
- (32) Each of the undersigned represents and warrants that he or she has full authority to enter into this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Dated: 10/12/2018

By: 

(Signature)

Printed Name: Richard W. Corey
Title: Executive Officer

MSC Mediterranean Shipping Company, S.A.

Dated: 28-9-18

By: 

(Signature)

Printed Name: CLAUDIO Botto
Title: C.O.O.