

## SETTLEMENT AGREEMENT

This Settlement Agreement and Release (Agreement) is entered into between the State of California Air Resources Board (CARB), with a principal location at 1001 I Street, Sacramento, California 95814; and MSC Mediterranean Shipping Company SA (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) sections 39650-39675 mandate 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 from diesel-powered engines as a TAC.
- (2) California Code of Regulations (CCR), title 13, section 2299.2 and CCR, title 17, section 93118.2 provides that the regulation applies to any person who owns, operates, charters, rents, or leases any ocean-going vessel (OGV) that operates in Regulated California Waters (RCW).
- (3) CCR, title 13, section 2299.2 (e) (1) and CCR, title 17, section 93118.2 (e) (1) set forth the regulation's operational requirements for fuel sulfur content limits for auxiliary diesel engines, main engines, and auxiliary boilers.
- (4) CCR, title 13, section 2299.2 (e) (2) and CCR, title 17, section 93118.2 (e) (2) set forth the regulation's recordkeeping, reporting, and monitoring requirements.
- (5) CCR, title 13, section 2299.2 (f) and CCR, title 17, section 93118.2 (f) set forth that any failure to meet the regulation's requirements, including but not limited to the applicable fuel sulfur content limits; recordkeeping requirements; and Noncompliance Fee provision, shall constitute a single, separate violation.
- (6) All regulatory requirements in paragraphs (1) through (5) are collectively referred to as the "OGV Low Sulfur Fuel Regulation."
- (7) Failure to properly complete the operational 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, authorize civil or administrative penalties not to exceed \$1,000.00 or \$10,000.00 for each day that the violation occurs.

## MSC Mediterranean Shipping Company SA - Settlement Agreement

- (8) CARB, with the cooperation of MSC, has documented that MSC failed to properly complete the operational requirements of the regulation on five voyages into California RCW by four vessels, resulting in violations of the OGV Low Sulfur Fuel Regulation for three days at strict liability; eight days of negligence; and three days of failure to correct (NOV #s: 2015-RME-012; 2015-RME-014; 2015-RME-020; 2015-RME-026; and 2015-RME-026).
- (9) In order to resolve these violations MSC has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. CARB accepts this Agreement in termination and settlement of this matter.
- (10) 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 violation and voluntarily agree to resolve this matter by means of this Agreement. Specifically, CARB and MSC agree as follows:

### II. TERMS AND CONDITIONS

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

- (1) 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 send the original signed Agreement and any future mailings or documents required per the terms of this Agreement to:

Mr. Alex Barber  
Air Pollution Specialist  
Enforcement Division  
Air Resources Board  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731

CARB shall send a copy of the signed Agreement and any future mailings or documents required per the terms of this Agreement to:

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

MSC Mediterranean Shipping Company SA - Settlement Agreement

- (2) Upon execution of this Agreement, MSC shall pay the penalty sum of three hundred fifty thousand dollars (**\$350,000.00**) no later than February 9, 2018, to the California Air Pollution Control Fund.

MSC will send the payment by February 9, 2018, along with the attached Settlement Agreement Payment Transmittal Forms to:

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

- (3) MSC shall not violate any provision of the OGV Low Sulfur Fuel Regulation.
- (4) MSC has demonstrated to the satisfaction of CARB that the alleged violations have been corrected.
- (5) 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 subsidiaries, principals, directors, receivers, trustees, officers, employees, agents, insurers, attorneys, predecessors, members, liquidators, assignees, and successors from claims for violations of the OGV Low Sulfur Fuel Regulation alleged in recital paragraph (8).

**III. GENERAL PROVISIONS**

- (1) 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.
- (2) The requirements of this Agreement shall apply to and 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.
- (3) The effective date of this Agreement shall be the date upon which MSC executes this Agreement.
- (4) 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.

## MSC Mediterranean Shipping Company SA - Settlement Agreement

- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) Each of the undersigned represents and warrants that he or she has full authority to enter into this Agreement.

#### **IV. PENALTY DETERMINATION**

- (1) 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; \$25,000 per day for negligent violations under H&SC section 42402.1(a); and \$40,000 per day for failing to take corrective action under section 42402.2(a). All vessels operated on fuel that failed to meet the 0.1 percent sulfur standard within the RWC. One vessel operated under strict liability for three days; three vessels operated negligently for a total of eight days; and one vessel operated under failure to correct for three days. The penalty obtained in this case is a total of \$350,000.00 USD.

This penalty was calculated by considering all factors specified in H&SC sections 42403 and 43024, including the fact that MSC implemented a compliance plan and 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 allegedly failed to comply with CCR, title 13, section 2299.2 and CCR, title 17, section 93118.2 of the OGV Low Sulfur Fuel Regulation, which was adopted under the authority of H&SC section 39674, et seq.

**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.**

Since CARB has alleged that the fuel used did not meet regulatory requirements, all of the emissions from it were excess and illegal. Without information on engine usage and emission rates, however, quantifying these excess emissions is not practicable.

- (2) MSC acknowledges that CARB has 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. However, since CARB does not have information on engine usage and emission rates, quantifying these excess emissions is not practicable.
- (3) 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.
- (4) 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

MSC Mediterranean Shipping Company SA - Settlement Agreement

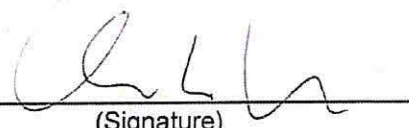
ordinary course of business. Accordingly, CARB will not release any submissions by MSC that are protected under the Evidence Code to any third party unless required by law.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Dated: 3/3/2018 By:   
(Signature)  
Printed Name: Richard W. Corey  
Title: Executive Officer

**MSC Mediterranean Shipping Company SA**

Dated: 2/7/18 By:   
(Signature)  
Printed Name: CLAUDIO BORZO  
Title: C.O.O.