

## SETTLEMENT AGREEMENT

This Settlement Agreement and Release of Los Angeles Superior Court Case No. BC628722 for alleged violations of large spark engine regulations described below (Agreement) is entered into between the plaintiff People of the State of California *ex rel.* State of California Air Resources Board (CARB), and SSA Containers, Inc., a Washington corporation with its headquarters in Seattle, Washington, and certain of its affiliated companies ("SSA"). CARB and SSA shall be referenced herein collectively as the Parties. The Parties agree to the following.

### I. RECITALS

- (1) Health and Safety Code section 43101 provides CARB with authority to adopt and implement standards and regulations for off-road engines, including off-highway vehicles. Pursuant to Health and Safety Code section 43013 and/or 43101, CARB implemented regulations addressing "off-road large spark-ignition engines" at California Code of Regulations, title 13, sections 2430-2439 (LSI Regulations). The purpose of the regulations is to reduce emissions from vehicles powered by large spark ignition engines.
- (2) CARB alleges that these statutes and regulations apply to anyone that sells, imports, delivers, purchases, rents, leases, acquires, or receives large spark ignition engines in California.
- (3) Under current law, failure to comply with the requirements of the LSI Regulations is a violation of state law that may result in penalties not to exceed \$5,000 per vehicle or engine, pursuant to Health and Safety Code section 43154, among other penalties. Health and Safety Code section 43016 provides civil penalties up to five hundred dollars (\$500.00) per each violation of the labeling requirements set forth in California Code of Regulations, title 13, section 2434. Failure to comply could also lead to the imposition of an injunction against further violations of law pursuant to Health and Safety Code section 43017.
- (4) CARB Enforcement Division staff alleged certain violations of the LSI Regulations with respect to SSA's operation of yard trucks in the Port of Oakland and the Port of Long Beach. It alleged that certain yard trucks were powered by large spark ignition engines that were not certified by the United States Environmental Protection Agency (U.S. EPA), and were therefore in violation of the LSI Regulations.
- (5) There is now pending a complaint filed by CARB against SSA in the Superior Court of Los Angeles County styled "People of the State of California *ex rel.* The California Air Resources Board," Los Angeles Superior Court Case No. BC628722, filed July 28, 2016. The complaint pertains to alleged violations of the LSI regulations. The complaint shall be referred to as the "Action." SSA filed an answer to that Action denying the material allegations.

## SSA Settlement Agreement

- (6) In its response to that complaint, SSA denies that it violated the LSI Regulations and alleges that it relied on advice from CARB staff regarding the compliance issues that are the subject of the Action.
- (7) CARB alleges that if the allegations described in the Action were proven, civil penalties could be imposed against SSA as provided in Health and Safety Code sections 43016 and 43151. CARB would also be entitled to injunctive relief pursuant to Health and Safety Code section 43017.
- (8) In reaching this settlement, CARB considered a variety of circumstances including the factors enumerated under Health and Safety Code section 43024. After consideration of these circumstances and factors, CARB deemed there are a number of mitigating factors, including, without limitation, SSA's cooperation with CARB's investigation, supporting this settlement.
- (9) SSA concedes the facts alleged paragraphs (1) through (7) but denies any liability resulting from said allegations as set forth in paragraphs (4), (5), (6), (7) and (8). SSA has fully cooperated in CARB's investigation of the allegations described herein.
- (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 violations and voluntarily agree to resolve this matter by means of this Agreement. In order to resolve the violations described herein, SSA has taken, or agrees to take, the actions enumerated below within the Terms and Conditions.

## II. TERMS AND CONDITIONS

In consideration of CARB dismissing the Action referred to above, CARB and SSA agree as follows:

- (1) The Parties shall exchange signed copies of this Agreement by September 20, 2017. This Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date thereof, although the original signature pages shall thereafter be appended to this Agreement. SSA shall send the original signed Agreement and any future mailings or documents required per the terms of this Agreement to:

Mr. H. Cuauhtémoc Pelayo  
Air Pollution Specialist  
Enforcement Division  
Air Resources Board  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731

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- (2) Upon execution of this Agreement, the sum of fifty thousand (\$50,000) shall be paid on behalf of SSA and its affiliated companies, as set forth in Schedule 1, no later than October 15, 2017, as follows:

- \$25,000 to the California Air Pollution Control Fund
- \$25,000 to the "Northern California Breathmobile (NCB), a SEP, which CARB has approved for mitigation for past violations.

Pursuant to this Agreement, SSA shall, within 30 days of executing this Agreement, comply with the NCB Agreement attached hereto regarding the NCB, and shall send a check to: "The Northern California Breathmobile Project," which shall include the entire SEP and all handling, service, or other administrative fees. SSA agrees that by funding this Project, it will not receive any direct or indirect benefit.

Should South Coast Air Management District not approve SSA's proposed payment of that amount into the "School Filtration Project Supplemental Environmental Project," SSA may, upon consultation with CARB, choose other supplemental environmental projects or pay any balance to the California Air Pollution Fund. Payment into any supplemental environmental project must be completed within two (2) weeks of SSA's receipt of notice of approval by the designated supplemental environmental project.

SSA will send to the Air Pollution Control Fund the payment by October 15, 2017, to:

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

SSA will also send to counsel for CARB a copy of payments it makes to the "School Filtration Project Supplemental Environmental Project."

SSA will not be responsible for the payment of any handling or service fees or fees of like nature that might be assessed in the administration or disbursement of the \$50,000.00.

- (3) Now therefore, in consideration of the penalty payment on behalf of SSA and all of its affiliates required by Section II, subdivision (2) herein, and upon full compliance with the requirements stated in Section II, Subdivision (3), CARB hereby releases SSA and its affiliates, principals, officers, agents, insurers, attorneys, predecessors, members, liquidators, and successors from claims for violations of the LSI Regulations alleged in the recitals above. CARB will also dismiss the Action with prejudice.
- (4) CARB will also file a Notice of Settlement after SSA executes this agreement and will dismiss the Action, with prejudice, within 30 days of confirmation of submittal of the payments referenced in Section II, subdivision (2), above.

### III. GENERAL PROVISIONS

- (1) This Agreement constitutes the entire agreement and understanding between CARB and SSA 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 SSA concerning the subject matter hereof.
- (2) The payment obligation under Section II, subdivisions (2) and (4) and the release obligations under Section II, subdivision (5) above shall apply to and be binding upon SSA and its officers, directors, receivers, trustees, employees, successors and assignees, members, parent corporations, subsidiaries and affiliates, 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 terms and conditions set forth in this Agreement shall remain valid and enforceable notwithstanding any future violations that may occur.
- (4) The effective date of this Agreement shall be the date upon which SSA executes this Agreement.
- (5) 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.
- (6) It is further agreed that the stipulated penalties identified in paragraph II, subdivision (2) above, are non-dischargeable under United States Code, title 11, section 523(a)(7).
- (7) This Agreement shall further serve to toll any statute of limitation related to any of the claims alleged in the Action until all terms and conditions of this Agreement have been fulfilled.
- (8) 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.
- (9) 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.
- (10) 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.
- (11) 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.
- (12) SSA's agreement to pay the penalties set forth herein is made solely for the purpose of a compromise and amicable settlement and is not to be construed as an admission of

SSA Settlement Agreement

liability for any of the violations alleged in the Complaint; SSA entered into this Agreement solely for the purpose of resolving all issues and avoiding the expense, burden and uncertainty of litigation.

- (13) Each of the undersigned represents and warrants that he or she has full authority to enter into this Agreement.
- (14) 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.
- (15) The Superior Court of California, County of Los Angeles has jurisdiction over the Parties for purposes of enforcing the terms of this Agreement.

**ACKNOWLEDGED AND ACCEPTED BY:**

**California Air Resources Board**

Dated: 9/18/2017

By:   
(Signature)

Printed Name: Ellen M. Peter  
Title: Chief Counsel

**SSA Containers, Inc.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SSA Terminals, LLC (Oakland)**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

SSA Settlement Agreement

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**ACKNOWLEDGED AND ACCEPTED BY:**

**California Air Resources Board**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Printed Name: Ellen M. Peter  
Title: Chief Counsel

**SSA Containers, Inc.**

Dated: Sept. 21, 2017

By: Jaimie Neal  
(Signature)

Printed Name: Jaimie Neal  
Title: Senior Vice President

**SSA Terminals, LLC (Oakland)**

Dated: 9/21/17

By: William Hirai

Printed Name: William Hirai  
Vice President

SSA Settlement Agreement

SSA Terminals, LLC (Long Beach)

Dated: 9/21/17

By: [Signature]

Printed Name: Matthew McCandell  
Secretary

SSA Terminals, LLC

Dated: 9/21/17

By: [Signature]

Printed Name: John Aldaya  
CFO

APPROVED AS TO FORM AND CONTENT

Xavier Becerra, Attorney General of California

Dated: 10/17/2017

By: [Signature]

Gary Tavetian  
Supervising Deputy Attorney General

Russell, Mirkovich & Morrow

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Joseph Mirkovich

Attorneys for SSA Containers, Inc., SSA Terminals LLC (Long Beach), SSA Terminals, LLC (Oakland), and SSA Terminals, LLC


Smach Simmons & Dunn

Dated: 10-12-17

By: [Signature]  
Michael Vergara


Attorneys for SSA Containers, Inc., SSA Terminals LLC (Long Beach), SSA Terminals, LLC (Oakland), and SSA Terminals, LLC

**SSA Terminals, LLC (Long Beach)**

Dated: 9/21/17 By: 

Printed Name: Matthew McConnell  
Secretary

**SSA Terminals, LLC**

Dated: 9/21/17 By: 

Printed Name: John Aldaya  
CFO

**APPROVED AS TO FORM AND CONTENT**

**Xavier Becerra, Attorney General of California**

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Gary Tavetian  
Supervising Deputy Attorney General

**Russell, Mirkovich & Morrow**

Dated: 10/11/2017 By: 

Joseph Mirkovich  
Attorneys for SSA Containers, Inc., SSA Terminals LLC  
(Long Beach), SSA Terminals, LLC (Oakland), and SSA  
Terminals, LLC

**Somach Simmons & Dunn**


Dated: \_\_\_\_\_ By: \_\_\_\_\_

Michael Vergara  
Attorneys for SSA Containers, Inc., SSA Terminals LLC  
(Long Beach), SSA Terminals, LLC (Oakland), and SSA  
Terminals, LLC



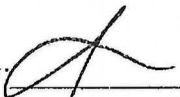
SSA Settlement Agreement

**SSA Terminals, LLC (Long Beach)**

Dated: 9/21/17 By: 

Printed Name: Matthew McCandell  
Secretary

**SSA Terminals, LLC**

Dated: 9/21/17 By: 

Printed Name: John Aldaya  
CFO

**APPROVED AS TO FORM AND CONTENT**

**Xavier Becerra, Attorney General of California**

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Gary Tavetian  
Supervising Deputy Attorney General

**Russell, Mirkovich & Morrow**

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Joseph Mirkovich  
Attorneys for SSA Containers, Inc., SSA Terminals LLC  
(Long Beach), SSA Terminals, LLC (Oakland), and SSA  
Terminals, LLC

**Somach Simmons & Dunn**

Dated: 10-12-17 By: 

Michael Vergara  
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**Xavier Becerra, Attorney General of California**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Gary Tavetian  
Supervising Deputy Attorney General

**Russell, Mirkovich & Morrow**

Dated: 10/11/2017

By: *Joseph Mirkovich*  
Joseph Mirkovich  
Attorneys for SSA Containers, Inc.

**Somach Simmons & Dunn**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Michael Vergara  
Attorneys for SSA Containers, Inc.

SSA Settlement Agreement

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Supervising Deputy Attorney General

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Dated: \_\_\_\_\_

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Joseph Mirkovich  
Attorneys for SSA Containers, Inc.

**Somach Simmons & Dunn**

Dated: 10-11-17

By: \_\_\_\_\_

Michael Vergara  
Attorneys for SSA Containers, Inc.

**SCHEDULE 1**

SSA and its affiliated companies are to pay the following allocated share of the \$50,000 payment:

SSA Containers, Inc.	\$15,487.00
SSA Terminals (Long Beach) LLC	16,814.00
SSA Terminals (Oakland), LLC	3,097.00
SSA Terminals, LLC	14,602.00