

## 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 Wan Hai Lines Ltd. (Wan Hai), with a principal location at 10<sup>th</sup> Floor 136 Sung Chiang Road, Taipei, Taiwan (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 2017 compliance year, vessel fleets that visited ports in California were required to be in compliance with the vessel in-use operational requirements by meeting the onboard auxiliary diesel engine operational time limits for at least 70 percent of the fleets' visits and reducing the fleets' onboard auxiliary-diesel-engine power generation by at least 70 percent from the baseline fleet power generation (BFPG) 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 of Wan Hai, has documented that Wan Hai failed to achieve the baseline power reduction requirement as specified in 17 CCR § 93118.3 (d)(1)(B)(2).
- (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, authorize 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 Wan Hai for the violations described above, CARB and Wan Hai agree as follows:

- (11) The Parties shall exchange signed copies of this Agreement. This Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement.

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

Mae Colcord  
Air Pollution Specialist  
California Air Resources Board  
9480 Telstar Avenue, Suite 4  
El Monte, CA 91731

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

Mr. Matson Yang  
President  
Wan Hai Lines (America) Ltd.  
17200 N. Perimeter Dr., Suite 200  
Scottsdale, AZ 85255

- (12) Upon execution of this Agreement, Wan Hai shall pay the sum of thirty one thousand, seven hundred fifty dollars (\$31,750.00) USD no later than March 27, 2019, as follows:

- \$31,750.00 USD to the California Air Pollution Control Fund

Wan Hai 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

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

- (22) 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.
- (23) 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.
- (24) It is further agreed that the penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7).
- (25) In the event Wan Hai fails to pay on time, Wan Hai shall pay all costs associated with collection of the penalties consistent with Government Code § 12513.1.
- (26) 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.
- (27) 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

- (28) 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 HS&C §§ 42403 and 43024.

The per unit penalty in this case is a maximum of \$10,000 per day for strict liability violations pursuant to H&SC § 39674 for each hour that a person operates the auxiliary diesel engine at a California port in violation of the At-Berth Regulation. In 2017, Wan Hai's fleet operated at the Ports of Los Angeles and Long Beach and failed to reduce its BFPG by 70 percent, resulting in a shortfall of 228 megawatt-hours, in violation of the At-Berth Regulation.

The number of separate violations was determined using the formulas set forth in (h)(2)(C). The penalty obtained in this case is \$31,750.00 USD.

After considering all factors specified in H&SC sections 42403 and 43024, the penalty was discounted based on the fact that the violator made substantial investments and diligent efforts under tight time constraints in an attempt to comply. The violator also continued to reduce emissions in the subsequent year, even when not subject to the regulation, and cooperated fully 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 § 39674 because Wan Hai failed to comply with the At-Berth Regulation (17 CCR § 93118.3) adopted under the authority of H&SC sections 39600, 39601, 39650, 39658, 39659, 39666, and 41511.

**Is the penalty being assessed 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.**

The At-Berth Regulation does not prohibit emissions above a specified level, but does impose in-use operational requirements for auxiliary engines on container, passenger, and refrigerated cargo vessels while docked at berth at a California port. Wan Hai operated vessels that visited a California port without complying with the in-use operational requirements and as a result, emitted excess diesel PM and oxides of nitrogen (NOx). Therefore, all of the emissions stemming from the violations were excess and illegal.

- (29) Wan Hai 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 § 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 imposes in-use operational requirements on vessel fleets visiting California ports.
- (30) 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. Penalties in future cases might be smaller or larger on a per unit basis.

- (31) The penalty in this case was based on confidential settlement communications between CARB and Wan Hai that CARB does not retain in the ordinary course of business. Accordingly, CARB will not release any submissions by Wan Hai that are protected under the Evidence Code to any third party unless required by law. The penalty also reflects CARB's assessment of the relative strength of its case against Wan Hai, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage that Wan Hai may have secured from its actions.
- (32) Now therefore, in consideration of the payment on behalf of Wan Hai, for deposit into the California Air Pollution Control Fund, CARB hereby releases Wan Hai and its principals, officers, agents, insurers, attorneys, predecessors, directors, receivers, trustees, employees, assignees, parent corporations, members, liquidators, and successors from claims for violations of 17 CCR § 93118.3 alleged in paragraph (7) of the Recitals.
- (33) 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**


By: 

Name: Ellen M. Peter

Title: Chief Counsel

Date: 3/12/2019

**Wan Hai Lines Ltd.**

By: 

Name: MR. MATSON YANG

Title: PRESIDENT - WAN HAI LINES (America)

Date: FEBRUARY 27, 2019