

This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB) 1001 I Street, Sacramento, California 95814, and DG Fairhaven Power LLC ("DG FAIRHAVEN"), 97 Bay Street, Samoa, California 95564.

## RECITALS

1. The Global Warming Solutions Act of 2006 authorized ARB to adopt regulations requiring the reporting and verification of greenhouse gas emissions. (Health & Saf. Code §38530.) Pursuant to that authority, ARB adopted the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR), California Code of Regulations (CCR), title 17, §95100 et seq.
2. The MRR is crucial to the development of the greenhouse gas (GHG) inventory, and supports other regulatory programs, including the cap on GHG emissions established by CCR, title 17, §95801 et seq., known as the Cap-and-Trade Regulation. The MRR requires most reporting entities to submit, by April 10 of each year, an emissions data report containing emissions and product data that is certified to be complete and accurate within stated standards. (CCR, tit. 17, §95103.) The April 10 deadline is intended to precede other regulatory events later in the year, such as verification under the MRR, and the distribution of allowances and surrender of compliance instruments under the Cap-and-Trade Regulation.
3. Where a report required under the MRR is late or does not meet the regulation's standards for accuracy, completeness, or third-party verification, the MRR provides that each day a report remains unsubmitted, incomplete or inaccurate constitutes a separate violation. (CCR, tit. 17, §95107.)
4. California Health & Safety Code sections 38580 and 42402 provide that one who violates the MRR or related regulations is strictly liable for a penalty of up to \$10,000 for each violation.
5. ARB contends that for the reporting period 2011 DG FAIRHAVEN failed to comply with the MRR by failing to submit its emissions report on time. As a result, ARB staff was obligated to contact the company and work to facilitate reporting and verification.
6. In reaching this settlement, ARB considered a variety of circumstances, including nature, magnitude, and duration of the violation, any harm to the environment or the regulatory program, efforts the violator took to correct the violation, and the financial burden to the violator.
7. In this matter, there were a number of mitigating factors, including that this is the first time ARB has noted the company as being in violation, the fact that DG FAIRHAVEN is a biomass generating plant that does not participate in the Cap-and-Trade program, and does not report under federal regulations, even a modest penalty is large in relation to the plant's modest revenue, the company's explanation indicates an innocent error, and the company has agreed to submit a GHG monitoring plan to ARB, although not so required by regulation, to demonstrate that reporting will be timely and

complete in future reporting years. At its own expense, DG FAIRHAVEN also hired an auditor for a complete review of all of its environmental compliance obligations.

8. In order to resolve these alleged violations, DG FAIRHAVEN has taken, or agreed to take, the actions enumerated below. By entering into this Agreement, DG FAIRHAVEN does not admit to any alleged violations. No provision of this Agreement constitutes an admission of wrongdoing by DG FAIRHAVEN, and its officers, directors, receivers, trustees, employees, successors and assigns, subsidiaries and parent corporations. Further, ARB accepts this Agreement in termination and settlement of this matter.

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 above-listed violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and DG FAIRHAVEN agree as follows.

### TERMS

10. DG FAIRHAVEN shall pay the sum of \$55,000. The payments shall be in the form of cashier's checks made payable to the "Air Pollution Control Fund," and delivered on the following schedule: \$18,334 on or before June 30, 2013, \$18,333 on or before September 30, 2013, and \$18,333 on or before December 30, 2013.

The check should note "DG FAIRHAVEN 2011 MRR settlement" in the memo section. Please submit the signed settlement agreement and checks to:

Mr. Will Brieger  
Air Resources Board, Office of Legal Affairs  
P.O. Box 2815  
Sacramento, CA 95812

11. It is agreed that these penalties imposed on DG FAIRHAVEN by ARB arising from the facts described in recital paragraphs 1 – 9 are non-dischargeable under 11 United States Code § 523 (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty or forfeiture payable to and for benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

12. DG FAIRHAVEN shall not violate the MRR, title 17 CCR section 95100 *et seq.*

13. Within 60 days of executing this Agreement, DG FAIRHAVEN shall submit to ARB a Greenhouse Gas Monitoring Plan that addresses any omissions and errors in the gathering and reporting of information in connection with reporting emissions from the year 2011.

14. This Agreement shall apply to and be binding upon DG FAIRHAVEN, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

15. This Agreement constitutes the entire agreement and understanding between ARB and DG FAIRHAVEN concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and DG FAIRHAVEN concerning the subject matter hereof.

16. 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.

17. 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.

18. 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.

19. 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.

20. Health & Safety Code section 39619.7 requires ARB to explain the manner in which the penalty was determined, the law on which it is based, and whether that law prohibits emissions at a specified level. DG FAIRHAVEN acknowledges that ARB has complied with section 39619.7 in investigating, prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health & Safety Code section 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed, which provision does not prohibit the emission of pollutants at a specified level. That information, some of which is also elsewhere in this settlement agreement, is summarized here.

**The manner in which the penalty was determined.** Penalties must be set at levels sufficient to deter violations. The penalties in this matter were determined based on all relevant circumstances, including the unique circumstances of this case, giving consideration to the eight factors specified in Health & Safety Code section 42403. Consideration was given to the reporting entity's size and complexity, the extent to which the monitoring and reporting deviated from MRR requirements, the cause of any errors and omissions, the magnitude of any errors, and whether emissions were over reported or under reported. Those circumstances were considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, penalties sought in other cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger.

In this matter the penalty was discounted based on the fact that the violation was a first time violation for this company, the emissions related to biomass energy generation that is not covered by the Cap-and-Trade Regulation, the company responded promptly when notified to report, the company did not benefit from delaying its report, circumstances suggest that the reporting error may have resulted from a misunderstanding, and the company made diligent efforts to comply and to cooperate with ARB's investigation.

**The legal provisions under which the penalty was assessed.** The penalty is based on Health & Safety Code section 42402 and CCR, title 17, section 95107, the provisions intended to govern MRR violations.

**Whether the governing provisions prohibit emissions at a specified level.** The MRR does not prohibit emissions above a stated level; instead, the MRR requires the timely and accurate reporting of emissions.

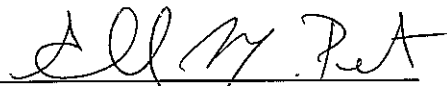
21. The penalty was based on confidential settlement communications between ARB and DG FAIRHAVEN. The penalty is the product of an arms length negotiation between ARB and DG FAIRHAVEN and reflects ARB's assessment of the relative strength of its case against DG FAIRHAVEN, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that DG FAIRHAVEN may have secured from its actions.

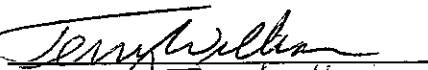
22. In consideration of the penalty payment and undertaking in paragraph 13, above, ARB hereby releases DG FAIRHAVEN and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations from any claims the ARB may have based on the circumstances described in paragraph 5, above.

23. The undersigned represent that they have the authority to enter into this Agreement.

**California Air Resources Board**

**DG Fairhaven Power LLC**

By:   
Ellen M. Peter  
Chief Counsel

By:   
Name: Jerry Williams  
Title: President/CEO

Date: 6/21/2013

Date: 6/19/2013