

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and TRANS OCEAN CARRIER, INC. (hereinafter "TOC") 1650 Harbor Avenue, Suite B, Long Beach, California 90813.

I. RECITALS

- (1) *H&SC* Sections 39650-39675 mandate the reduction of the emission of substances that have been determined to be toxic air contaminants (TACS). In 1998, following an exhaustive 10-year scientific assessment process, the ARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. Drayage trucks are powered by diesel fueled engines that emit toxic particulate matter. Drayage trucks are controlled under the Drayage Truck Regulation as codified in Title 13, CCR, Section 2027.
- (2) Title 13, CCR, Section 2027 (d) (5) (A) 2 requires drayage truck motor carriers only dispatch drayage trucks that meet emission standards and compliance deadlines set forth in Phases 1 and 2 in Section 2027 (d). Section 2027 (d) (5) (A) 3 requires motor carriers only dispatch drayage trucks that are registered and in good standing with the Drayage Truck Registry (DTR).
- (3) The ARB Enforcement Division staff has documented that TOC, as a motor carrier, dispatched drayage trucks that were either not registered with the DTR or not compliant with the emission standards set forth in the Drayage Truck Regulation.
- (4) *H&SC* Sections 39674 (a) and (b) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars (\$1,000) or not to exceed ten thousand dollars (\$10,000) respectively, for each day in which the violation occurs.
- (5) ARB contends that if the facts described in recital paragraphs (1) – (4) were proven civil penalties could be imposed against TOC, as provided in *H&SC* Sections 43016 and 39674.
- (6) TOC is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation, and therefore agree as follows:

II. TERMS & RELEASE

In consideration of ARB not filing a legal action against TOC, for the violations alleged above, ARB and TOC agree as follows:

(1) Upon execution of this Agreement, TOC shall pay a civil penalty of \$1,275.00. Payment shall be made in check form as described below.

- \$956.25 to the **California Air Pollution Control Fund**.
- \$318.75 to the **Peralta Community College District**.
- All payments and documents shall be sent to the attention of:

Dr. Xiangyi Li, Ph.D., ARE
Air Resources Board
Enforcement Division
9480 Telstar Avenue Suite 4
El Monte, CA 91731

(2) If the Attorney General files a civil action to enforce this settlement agreement, CWS shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(3) TOC shall not dispatch drayage trucks that are not compliant with the emission standards set forth in the Drayage Truck Regulation or trucks that are not registered with the DTR. The ARB reserves the right to audit the dispatch records of TOC for compliance with Title 13, CCR, Section 2027 (d) (5) any time in the future.

(4) TOC shall not violate the Drayage Truck Regulation, as codified in Title 13, CCR, Section 2027.

(5) This Agreement shall apply to and be binding upon TOC, 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.

(6) This Agreement constitutes the entire agreement and understanding between ARB and TOC, concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and TOC, concerning the subject matter hereof.

- (7) 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.
- (8) Severability. 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.
- (9) 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.
- (10) 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.
- (11) **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see *H&SC* section 39619.7). This information, which is provided throughout this settlement agreement, is summarized here.

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* sections 42403 and 43024.

The per vehicle penalty for the drayage violations involved in this case is a maximum of \$1,000 per vehicle per day for strict liability violations or \$10,000 per vehicle per day for negligent or intentional violations pursuant to *H&SC* section 39674. The penalty obtained for the drayage motor carrier violations involved in this case is \$1,275.00 for 8 dispatches of non-compliant vehicles by TOC or \$75.00 per violation and 18 dispatches of non-registered vehicles by TOC or \$37.50 per violation after considering the factors specified in *H&SC* section 43024. This penalty was reduced because this was a first time violation and TOC took exceptional efforts to come into compliance and cooperate 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 for the Drayage Truck Regulation (Title 13, CCR, section 2027) violations in this case is *H&SC* section 39674 because the Drayage Truck Regulation is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in *H&SC* sections 39650 - 39675 and because TOC, as a motor carrier, dispatched drayage trucks that were either not registered with the DTR or not compliant with the emission standards set forth in the Drayage Truck Regulation..

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 provisions cited above do prohibit emissions above a specified opacity or level of g/hp-hr. However, since the hours of operation of the non-compliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (12) TOC acknowledges that ARB has complied with SB 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at *H&SC* section 43024, has explained the manner in which the penalty amount was calculated, 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.
- (13) 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 cases, and the potential costs and risk associated with litigating these particular violations. The penalty was discounted based on the fact that the drayage violations were first time violations and the violator made unusually diligent efforts to comply and to cooperate with the investigation. Penalties in future cases might be smaller or larger on a per unit basis.
- (14) The penalty was based on confidential settlement communications between ARB and TOC that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and TOC and reflects ARB's assessment of the relative strength of its case against TOC, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and

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remove any unfair advantage that TOC may have secured from its actions.

- (15) Now, therefore, in consideration of the payment by TOC, in the amount of one thousand two hundred seventy five dollars (\$1,275.00), ARB hereby releases TOC and its principals, officers, directors, agents, subsidiaries, predecessors, and successors from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs (1) – (4) above. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By:  12/20/12

Name: James R. Ryden

Title: Chief Enforcement Division

Date:

Trans Ocean Carrier, Inc.

By: 

Name: Richard Tsao

Title:

Date:

VP Operations
12/13/2012