

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Bahia Sternwheeler, Inc., with its principal location at 998 W Mission Bay Dr. San Diego, CA 92109 (collectively, the "Parties," or individually, "Party").

### **LEGAL BACKGROUND**

- (1) Purpose. The California Health and Safety Code mandates the reduction of the emission of toxic air contaminants (TAC). CARB has determined that particulate matter (PM) from diesel-fueled engines is a TAC. (Health & Safety Code §§ 39650-39675.)
- (2) Regulation. CARB adopted the *Airborne Toxic Control Measure for Commercial Harborcraft* (CHC Regulation) to reduce diesel PM and criteria pollutant emissions from diesel propulsion and auxiliary engines on commercial harbor craft that operate in Regulated California Waters (RCW). (Cal. Code Regs., tit. 17, § 93118.5.)
- (3) Regulatory Provisions. Any person who sells, supplies, offers for sale, purchases, owns, operates, leases, charters, imports, rents, or otherwise acquires, any new or in-use diesel fueled commercial harbor craft that is operated in any RCW must meet the fuel use and emission requirements outlined in the CHC Regulation, install a non-resettable hour meter, and report specific information to CARB. (Cal. Code Regs., tit. 17, §§ 93118.5 (b), (e), (h).)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to eleven thousand nine hundred ten dollars (\$11,710.00 USD) for strict liability violations; respectively, per engine or piece of CHC for each day in which the violation occurs. (Cal. Code Regs., tit. 17, § 93118.5; Health & Safety. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., and 42410.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, Bahia Sternwheelers, Inc., was organized under the laws of California as a corporation and conducted business in the State of California. Bahia Sternwheelers, Inc. is a fully owned subsidiary of BH Partnership L.P., which operates the harbor craft.
- (6) Allegations. CARB alleges that Bahia Sternwheeler, Inc. violated the CHC Regulation by owning and operating new or in-use diesel fueled commercial harbor craft excursion vessels, that operated in RCW and did not conform to the requirements of the CHC Regulation as outlined in Notice of Violation CHC07192022\_BRH by failing to comply with in-use engine emission standards.

CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against Bahia Sternwheelers, Inc. for each and every piece of equipment involved in the violation(s) and each day for which a violation occurred.

- (7) Acknowledgment. Bahia Sternwheelers, Inc. admits to the facts in paragraphs 1 through 6 but denies any liability resulting from said allegations.
- (8) Consideration. 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 Settlement Agreement. In order to resolve the violations described herein, Bahia Sternwheelers, Inc. has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

### **TERMS AND CONDITIONS**

In consideration of CARB not filing a legal action against Bahia Sternwheelers, Inc. for the alleged violations referred to above in the Legal Background and Case Background, and Bahia Sternwheelers, Inc.'s agreement to complete all terms and conditions set forth below, CARB and Bahia Sternwheelers, Inc. agree as follows:

- (9) Settlement Amount. Bahia Sternwheelers, Inc. shall pay a civil penalty of twenty three thousand and forty four dollars (\$23,044.00 USD) to the CARB Air Pollution Control Fund, and twenty three thousand and forty four dollars (\$23,044.00 USD) to San Diego County Air Pollution Control District (SDAPCD) for a total settlement of forty six thousand and eighty eight dollars (\$46,088.00 USD). Bahia Sternwheelers, Inc. shall make all payments within thirty (30) calendar days from the Notification Date.
- (10) Notification Date. The date upon which CARB notifies Bahia Sternwheelers, Inc. according to Paragraph 13 (Notices), that the Settlement Agreement is fully executed or when CARB sends the fully executed Settlement Agreement to Bahia Sternwheelers, Inc.
- (11) Civil Penalty Payment Method. Bahia Sternwheelers Inc. shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to the "California Air Resources Board," and "San Diego County Air Pollution Control District" using instructions provided separately by CARB in the "Payment Transmittal Form (CARB)" and "Payment Transmittal Form (SDAPCD)". Bahia Sternwheelers Inc. is responsible for all payment processing fees. Payments shall be accompanied by both Payment Transmittal Forms to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of

carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to Bahia Sternwheelers Inc. in accordance with Paragraph 13 (Notices).

- (12) Documents. Bahia Sternwheelers, Inc. shall promptly email or mail the signed and dated Settlement Agreement to the address or email in Paragraph 13 (Notices).
- (13) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board  
Enforcement Division / Settlement Agreements  
Marine and Freight Enforcement Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to Bahia Sternwheelers, Inc.:

Bahia Sternwheelers, Inc.  
Bahia Resort Hotel  
998 W Mission Bay Dr.  
San Diego, CA 92109  
rgleason@evanshotels.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (14) Repeat Violations. Bahia Sternwheelers, Inc., and BH Partnership L.P. agrees that they must comply with the regulation and acknowledges that repeat violations could result in increased penalties in the future.
- (15) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 7 pages and 33 numbered paragraphs.
- (16) Binding Effect. This Settlement Agreement binds Bahia Sternwheelers, Inc., and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, including BH Partnership L.P. and CARB and any

successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.

- (17) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (18) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (19) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (20) Choice of Law. This Settlement 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.
- (21) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 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 the benefit of a governmental unit.
- (22) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (23) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.
- (24) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud,

duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.

- (25) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (26) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (27) Release. In consideration of full payment of the civil penalty, and all other undertakings above, CARB hereby releases Bahia Sternwheelers, Inc. and its principals, officers, receivers, trustees, successors and assignees, subsidiary, and parent corporations, including BH Partnership L.P., from any claims CARB may have based on the circumstances described in Paragraph 6 (Allegations) above.
- (28) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

#### **PENALTY BASIS**

- (29) Per Unit Penalty. The per unit penalty in this case is a maximum of eleven thousand seven hundred ten dollars (\$11,710.00 USD) per CHC diesel engine and/or vessel per day, under Health and Safety Code section 39674, for violations of the CHC Regulation. (Cal. Code Regs., tit. 17, § 93118.5.) The penalty of \$46,088 over an unspecified number of days of violation is for two noncompliant vessel(s). The per unit penalty in this case is approximately \$7,681 per noncompliant engine.
- (30) Emissions. The provisions cited in Paragraph 6 (Allegations) above do prohibit emissions above a specified level. Without information on engine usage and emission rates, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the vessel(s) did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- (31) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to

violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.

(32) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Bahia Sternwheelers, Inc., or confidential settlement communications.

(33) Effect of Settlement/Reservation of Rights. The following shall apply:

- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Bahia Sternwheelers, Inc., with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Bahia Sternwheelers, Inc., with respect to:
  - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
  - (ii) Facts that were not disclosed by Bahia Sternwheelers, Inc. to CARB.
  - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
  - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
  - (v) Any criminal liability.
  - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Bahia Sternwheelers, Inc. shall not assert, and may not maintain, any defense or claim based upon the

principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.

- (d) This Settlement Agreement does not limit or affect the rights of Bahia Sternwheelers, Inc. or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Bahia Sternwheelers, Inc., except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Bahia Sternwheelers, Inc. is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Bahia Sternwheelers, Inc.'s compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Bahia Sternwheelers, Inc.'s compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: /S/

Name: Heather L. Quiros

Title: Chief, Enforcement Division

Date: July 15, 2024

**Bahia Sternwheelers, Inc.**

Signature: /S/

Name: Robert H. Gleason

Title: President and Chief Executive Officer

Bahia Sternwheelers, Inc. Settlement Agreement  
Notice of Violation: CHC07192022\_BRH

Date: June 20, 2024