

## 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 CMA CGM S.A. (CMA CGM), with its principal location at Boulevard Jacques Saade, 4, quai d'Arenc 13235 Marseille cedex 02 France (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 & Saf. Code §§ 39650-39675.)
2. Regulation. CARB adopted the *Fuel Sulfur and Other Operational Requirements for Ocean-Going Vessels Within California Waters and 24 Nautical Miles of the California Baseline* (Low-Sulfur Fuel Regulation) to reduce diesel PM and criteria pollutant emissions from ocean going vessels. (Cal. Code Regs., tit.13, § 2299.2; Cal. Code Regs., tit.17, § 93118.2.)
3. Regulatory Provisions. Any person who owns, operates, charters, rents, or leases any ocean-going vessel that operates in Regulated California Waters must meet the operational requirements for fuel sulfur content limits for auxiliary diesel engines, main engines, and auxiliary boilers, as well comply with the recordkeeping, reporting, and monitoring requirements on noncompliance fee provision.
4. Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to ten thousand dollars (\$10,000) for strict liability violations for each day in which the violation occurs. (Cal. Code Regs., tit.13, § 2299.2; Cal. Code Regs., tit. 17, § 93118.2; Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., and 42410.)

### CASE BACKGROUND

5. Corporate Entity. At all relevant times, CMA CGM was organized under the laws of France and conducted business in the State of California.
6. Allegations. This Settlement Agreement resolves Notice of Violation (NOV) RMES082018OGV01 CMA, which was issued on September 11, 2018. CARB alleges CMA CGM violated the Low-Sulfur Fuel Regulation by failing to comply with the operational requirements on 6 voyages into Regulated California Waters by 1 vessel entering the Ports of Los Angeles and Oakland, resulting in 22 days, and 52 hours of violations, as outlined in Notice of Violation (NOV)

RMES082018OGV01 CMA. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against CMA CGM for each and every day of violation.

7. Acknowledgment. CMA CGM admits to paragraphs 1 through 6, but denies any liability resulting from said allegations. Settlement of this matter shall not constitute an admission of liability.
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, CMA CGM 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 CMA CGM for the alleged violations referred to above in the Legal Background and Case Background, and CMA CGM's payment of the penalties and funding the Supplemental Environmental Project (SEP) set forth below, CARB and CMA CGM agree as follows:

9. Penalty. CMA CGM shall pay a civil penalty and agrees to fund a SEP entitled Installation of Air Filtration Systems in Schools Oakland in the total amount of one hundred sixty-five thousand nine hundred twenty dollars (**\$165,920.00 USD**) in full and final settlement of NOV RMES082018OGV01 CMA. CMA CGM shall pay eighty-two thousand nine hundred sixty (\$82,960.00 USD) into the Air Pollution Control Fund within 30 calendar days from full execution of the Settlement Agreement.
10. SEP. Of the total amount, CMA CGM agrees to pay 50 percent of the penalty, in the amount of eighty-two thousand nine hundred sixty (\$82,960.00 USD) to undertake a SEP entitled Installation of Air Filtration Systems in Schools Oakland as described in the SEP Summary consistent with CARB's SEP Policy within 30 calendar days from full execution of the Settlement Agreement.
11. Penalty Payment Method(s). CMA CGM agrees to pay by check, credit card, wire transfer, or portal, using instructions provided separately by CARB in a Payment Transmittal Form. Payments shall be made to the address that correlates to the payment method elected, and shall be accompanied by the Payment Transmittal Form to ensure proper application:

**For payments made by check or credit card, mail to:**

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

**For payments made by wire transfer:**

State of California Air Resources Board  
c/o Bank of America, Inter Branch to 0148  
Routing No. 0260-0959-3 Account No. 01482-80005  
Notice of Transfer: Edna Murphy, Fax: (916) 322-9612  
Reference: RMES082018OGV01 CMA

*Wire Transfer Fee:* Vendor is responsible for any bank charges incurred for processing wire transfers

**For payments made via the First Data payment portal:**

Information to assist you with making online payments via the First Data payment portal is available at this link on CARB's website:  
<https://ww2.arb.ca.gov/payments>

12. SEP Payment Method(s). Within 30 business days following notice from CARB that the Settlement Agreement has been signed by all parties, CMA CGM shall pay \$82,960.00 USD by wire transfer or check payable to IQAir Foundation using instructions provided separately by IQAir Foundation. For payment to IQAir Foundation, CMA CGM shall send the payment to:

IQAir Foundation  
Installation of Air Filtration Systems in Schools Oakland  
14351 Firestone Boulevard  
La Mirada, CA 90638

13. Documents. CMA CGM shall promptly email and then mail the original signed and dated Settlement Agreement, with copy of proof of payment of the penalty and the SEP, a copy of the Payment Transmittal Form for each to:

California Air Resources Board  
Attention: Alex Barber  
Field Operations Branch / Railroad and Marine Enforcement Section  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731

14. Prohibition Against Financial Benefit. CMA CGM has agreed that by funding the SEP, CMA CGM will not receive any direct or indirect financial benefit, and that whenever CMA CGM publicizes or refers to the SEP or the results of the SEP, CMA CGM will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
15. Assignment of Rights. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, CMA CGM assigns any and all rights against the SEP implementer to CARB.
16. Repeat Violations. CMA CGM acknowledges that repeat violations could result in increased penalties in the future.
17. 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 35 paragraphs.
18. Binding Effect. This Settlement Agreement binds CMA CGM, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
19. Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
20. 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.
21. 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.

22. 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.
23. 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.
24. 26 U.S.C. Section 162(f)(2)(A)(ii) Identification. CMA CGM shall not deduct any penalties paid pursuant to this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
25. 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.
26. 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.
27. 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.
28. Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
29. Counterparts. This Settlement Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement.

30. Release. In consideration of the full completion of penalty payment, SEP payment, and all undertakings above, CARB hereby releases CMA CGM and its principals, officers, vessels, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above. Upon funding the SEP entitled IQAir Foundation, CMA CGM is released of liabilities as they relate to implementation of the SEP for IQAir Foundation.
31. Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

### **PENALTY BASIS**

32. Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of ten thousand dollars (\$10,000) per day under Health and Safety Code section 39674, for violations of the Low-Sulfur Fuel Regulation. (Cal. Code Regs., tit.13, § 2299.2; Cal. Code Regs., tit.17, § 93118.2.) The penalty of \$165,920.00 is for 22 full days of violations at \$6,100/day and 52 hours of partial day violations at \$610 per hour for one noncompliant vessel.
33. Emissions. The provisions cited above do not 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.
34. Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors and CARB's Enforcement Policy. CMA CGM came into compliance quickly and cooperated with the investigation. 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 in consideration of past penalties in similar cases, 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.
35. Confidential Business Information. CARB based this penalty in part on confidential business information provided by CMA CGM and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: \_\_\_\_\_ Richard W. Corey \_\_\_\_\_

Title: \_\_\_\_\_ Executive Officer \_\_\_\_\_

Date: \_\_\_\_\_ 4/7/2020 \_\_\_\_\_

**CMA CGM S.A.**

Signature: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: \_\_\_\_\_ Bernard Mathias \_\_\_\_\_

Title: \_\_\_\_\_ Dep Legal CMA CGM \_\_\_\_\_

Date: \_\_\_\_\_ 3/5/2020 \_\_\_\_\_