

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 Mitsui O.S.K. Lines Ltd. (MOL) with its principal location in the Shosen Mitsui Building at 1-1 Toranomom 2-Chrome, Minato-ku, Tokyo, 105-8688 Japan (collectively, the Parties).

I. RECITALS

1. California Health and Safety Code section 39650-39675 (Health & Saf. Code §§ 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. As set forth in 17 CCR § 93118.3 (d), for the 2017 through 2018 compliance years, vessel fleets that visited ports in California were required to be in compliance with the in-use operational requirements by plugging into shore power for at least 70 percent of the fleets visits, and to reduce the baseline fleet power generation (BFPG) by 70 percent. The calculation methodologies for determining compliance with the At-Berth Regulation are set forth in 17 CCR § 93118.3 (e).
5. Responsible officials for each vessel fleet obligated to comply with the At-Berth Regulation are 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 full cooperation from MOL, has determined that MOL did not achieve the baseline power reduction requirement and failed to achieve the

applicable percentage of visits as specified in 17 CCR § 93118.3 (d)(1)(A). MOL did submit timely annual statements in compliance with 17 CCR § 93118.3.

8. CARB asserts that failure to meet the requirements of the regulation is a violation of State Law resulting in penalties. Health and Safety Code sections 39674, 39675, 42400 et seq., 42402 et seq., and 42410, authorizes civil or administrative penalties not to exceed \$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 Settlement Agreement.

II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against MOL for the alleged violations referred to above in recitals (1) through (9), and MOL's payment of the penalties set forth below, CARB and MOL agree as follows:

10. The Parties shall exchange signed and dated copies of this Settlement Agreement. 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.
11. Upon execution of this Settlement Agreement, MOL shall pay a civil penalty in the total amount of **two hundred fifty-three thousand and three hundred dollars (\$253,300.00 USD)**, which shall be made in one payment as described below, beginning 30 days after the execution of this Settlement Agreement.

Payment Due Date:	In the Amount of and Payable to:
30 days	\$253,300 Air Pollution Control Fund

MOL shall send the payment along with the "Settlement Agreement Payment Transmittal Form" provided by CARB to:

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

Payment shall be made by wire transfer transmittal as follows:

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: NOV CASE # SP_121118_MOL

MOL will be responsible for any bank charges incurred for processing the wire transfer.

MOL shall transmit the payment by wire transfer as provided for in the Payment Transmittal Form and shall mail the signed and dated Settlement Agreement, Payment Transmittal Form, a copy of the check, and any future mailings or documents per the terms of this Settlement Agreement to:

Ms. Rebecca Geyer
Air Pollution Specialist
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, California 95812

12. If any payment is more than fifteen (15) days late, the entire remaining balance becomes immediately due and payable. In addition, if the Attorney General files a civil action to enforce this settlement agreement, MOL shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
13. MOL shall comply with all requirements of the At-Berth Regulation (17 CCR § 93118.3).
14. This Settlement Agreement constitutes the entire agreement and understanding between CARB and MOL 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 MOL concerning the subject matter hereof.
15. The terms of this Settlement Agreement shall be binding upon MOL 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 Settlement Agreement.

16. The terms and conditions set forth in this Settlement Agreement shall remain valid and enforceable notwithstanding any future violations that may occur.
17. The effective date of this Settlement Agreement shall be the date upon which MOL executes this Settlement 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 Settlement Agreement.
19. This Settlement Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Settlement Agreement have been fulfilled.
20. MOL agrees not to assert laches as a defense.
21. 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. The headings in this Settlement Agreement are not binding and are for reference only and do not limit, expand, or otherwise affect the contents of this Settlement Agreement.
23. 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.
24. 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).
25. In the event MOL fails to pay on time, MOL shall pay all costs associated with collection of the penalties consistent with Government Code § 12513.1.
26. MOL shall not deduct any penalties paid pursuant to this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
27. This Settlement 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.

28. CARB expressly reserves the right to bring an enforcement action based on violations of law not covered in this Settlement Agreement and to seek whatever fines, penalties, or remedies provided by law, including injunctive relief.

III. PENALTY DETERMINATION

29. Pursuant to Health and Safety Code 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 Health and Safety Code sections 42403 and 43024.

The maximum per unit penalty is \$10,000 per day for strict liability violations under Health and Safety Code section 39674 for each violation of the At-Berth Regulation. From 2017 to 2018, MOL vessels operated at the port of Oakland but did not plug the vessels into shore power for at least 70 percent of the visits, and did not reduce the BFPG by 70 percent, resulting in 936 violations of the At-Berth Regulation. MOL agreed to a penalty for 743 violations in 2017 of \$250 per violation and 193 violations in 2018 of \$350 per violation.

This penalty was calculated by considering all factors specified in Health and Safety Code sections 42403 and 43024, including the fact that MOL made significant investments in an effort to comply with the At-Berth Regulation, there were factors beyond the reasonable control of MOL that contributed to the violations, and MOL's cooperation with CARB's investigation.

Penalties were also 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. The penalty reflects violations extending over a number of days considered together with the complete circumstances of this case. The penalty also reflects CARB's assessment of the relative strength of its case against MOL, the desire to avoid the uncertainty, burden, and expense of litigation, to obtain swift compliance with the law, and to remove any unfair advantage that MOL may have secured from its actions. Penalties in future cases might be smaller or larger on a per unit basis.

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 Health and Safety Code section 39674 because MOL failed to comply with the At-Berth Regulation (17 CCR § 93118.3), which was adopted under the authority of Health and Safety Code sections 39600, 39601, 39650, 39658, 39659, 39666, and 41511.

Whether the 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 ATCM does not prohibit emissions above a specified level, but does impose in-use operational requirements for any person who owns, operates, charters, rents, or leases any U.S. or foreign-flagged container vessel, passenger vessel, or refrigerated cargo vessel that visits a California port. MOL operated vessels that visited California ports without complying with the in-use operational requirements and as a result, emitted excess PM and oxides of nitrogen (NOx). All of the emissions stemming from the violation were excess and illegal.

30. MOL acknowledges that CARB complied with Health and Safety Code section 39619.7 in prosecuting or settling this case. Specifically, CARB has considered all relevant facts, including those listed at Health and Safety Code sections 42403 and 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 prohibits the emission of pollutants at a specified level.
31. The penalty in this case was based in part on confidential business information provided by MOL that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and MOL that CARB does not retain in the ordinary course of business. Accordingly, CARB will not release any submissions by MOL that are protected under the Evidence Code, California Public Records Act or other similar laws to any third party unless required by law and/or Court Order.
32. In consideration of the payment by MOL to CARB, for deposit into the California Air Pollution Control Fund, CARB hereby releases MOL and its principals, officers, agents, insurers, attorneys, predecessors, directors, receivers, trustees, employees, assignees, parent corporations, members, liquidators, and successors from claims for violations of the At-Berth Regulation alleged in the recitals.

