

SETTLEMENT AGREEMENT

This Settlement Agreement and Release (Agreement) is entered into between the State of California Air Resources Board (ARB), with a principal location at 1001 I Street, Sacramento, California 95814; and Seaside Transportation Services, LLC (STS) with a former principal location at 389 Terminal Way, Terminal Island, CA 90731 (collectively, the Parties).

I. RECITALS

- (1) Health and Safety Code sections 39650-39675 mandate 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, the Air Resources Board (ARB) identified particulate matter (PM) from diesel-fueled engines as a TAC. Mobile cargo handling equipment (CHE) is powered by diesel-fueled engines that emit toxic PM. CHE diesel PM emissions are regulated under chapter 9, division 3, California Code of Regulations, title 13, section 2479 (Cal. Code Regs., tit. 13, § 2479; hereinafter CHE Regulation).
- (2) The purpose of the CHE Regulation is to reduce diesel PM and criteria pollutant emissions from compression ignition (CI) mobile CHE that operates at ports and intermodal rail yards in the State of California.
- (3) The CHE Regulation applies to any person who conducts business in California, who sells, offers for sale, leases, rents, purchases, owns, or operates any CI mobile CHE that operates at any California port or intermodal rail yard.
- (4) Any CI mobile CHE that operates at any California port or intermodal rail yard must meet the performance requirements outlined in the CHE Regulation.
- (5) Failure to comply with the requirements of the CHE Regulation is a violation of state law that may result in penalties. Health and Safety Code sections 39674, 39675, 42400 et seq., 42402 et seq., and 42410 authorize civil penalties for the violation of the programs for the regulation of TACs not to exceed one thousand dollars (\$1,000.00) or not to exceed ten thousand dollars (\$10,000.00), respectively, per engine or piece of CHE for each day in which the violation occurs.
- (6) At all relevant times, STS was a Limited Liability Company organized under the laws of the State of Delaware. The majority (70%) member of STS was Ally Holding Limited, a British Virgin Islands Corporation owned/controlled within the Evergreen Group of companies. Marine Terminals Corporation, a Nevada corporation, was the minority (30%) member of STS. At all relevant times STS operated a port facility in California.

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- (7) ARB Enforcement Division staff alleged certain violations of the CHE Regulation with respect to STS's operation of CHE in California, with 11 rubber tired gantry (RTG) cranes and 9 non-yard trucks that did not conform to the requirements of the CHE Regulation. In particular, these alleged violations involve the lease, rental, purchase, ownership, or operation of CI mobile CHE that operates at STS's California port facility.
- (8) ARB alleges that if the allegations described in recitals 1 through 7 were proven, civil penalties could be imposed against STS as provided in Health and Safety Code sections 39674, 39675, 42400 et seq., 42402 et seq., and 42410 for each and every piece of equipment involved in the violations and each day.
- (9) STS admits to recital paragraphs 1 through 7, but denies any liability resulting from said allegations. STS has cooperated in ARB's investigation of the allegations described herein.
- (10) 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 Agreement. In order to resolve the violations described herein, STS has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, ARB accepts this Agreement in termination and full settlement of this matter.

II. TERMS AND CONDITIONS

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

- (1) The Parties shall exchange signed copies of this Agreement by March 17, 2017. This 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 Agreement. STS shall send the original signed Agreement and any future mailings or documents required per the terms of this Agreement to:

Mr. H. Cuauhtémoc Pelayo
Air Pollution Specialist
Enforcement Division
Air Resources Board
9480 Telstar Avenue, Suite 4
El Monte, California 91731

- (2) Upon execution of this Agreement, the sum of four hundred thirty-seven thousand, five hundred dollars (**\$437,500.00**) shall be paid on behalf of STS no later than March 17, 2017, as follows:
- \$218,750.00 to the California Air Pollution Control Fund
 - \$218,750.00 to the San Joaquin Valley Air Quality Management District School Bus Diesel Particulate Filter Retrofit Supplemental Environmental Project (SEP)

STS will send the payment by March 17, 2017, along with the attached Settlement Agreement Payment Transmittal Form (Attachment A) to:

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

- (3) STS shall not violate any provision of the CHE Regulation.
- (4) Prior to the execution of this Agreement, all equipment alleged by ARB to have been in violation and cited in the Notice of Violation #081012-HCP-01, issued October 24, 2012, has been sold, retired, retrofitted, replaced, or otherwise brought into compliance with the in-use requirements of the CHE Regulation as outlined in California Code of Regulations, title 13, section 2479.
- (5) STS has demonstrated to the satisfaction of ARB that the alleged violations have been corrected.
- (6) Now therefore, in consideration of the payment on behalf of STS to ARB, for deposit into the California Air Pollution Control Fund, ARB hereby releases STS and its principals, officers, agents, insurers, attorneys, predecessors, members, liquidators, and successors from claims for violations of the CHE Regulation alleged in recital paragraph 7.

III. GENERAL PROVISIONS

- (1) This Agreement constitutes the entire agreement and understanding between ARB and STS 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 ARB and STS concerning the subject matter hereof.

- (2) The payment obligation under section II(2) and the release obligations under section II(6) shall apply to and be binding upon STS and its officers, directors, receivers, trustees, employees, successors and assignees, members, parent corporations, and subsidiaries, if any; and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (3) The terms and conditions set forth in this Agreement shall remain valid and enforceable notwithstanding any future violations that may occur.
- (4) The effective date of this Agreement shall be the date upon which STS executes this Agreement.
- (5) 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.
- (6) This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
- (7) STS agrees not to assert laches as a defense.
- (8) Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Agreement remains in full force and effect.
- (9) The headings in this Agreement are not binding and are for reference only and do not limit, expand, or otherwise affect the contents of this Agreement.
- (10) 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.
- (11) It is further agreed that the stipulated penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7).
- (12) 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.
- (13) Each of the undersigned represents and warrants that he or she has full authority to enter into this Agreement.

IV. PENALTY DETERMINATION

- (1) Pursuant to Health and Safety Code section 39619.7, ARB 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 section 43024.

The per unit or per vehicle penalty in this case is a maximum of \$1,000.00 per unit per day for strict liability violations, and \$10,000.00 per unit per day for negligent or intentional violations. The penalty of \$437,500.00 over an unspecified number of days of violation is for 11 noncompliant RTG and 9 noncompliant non-yard truck units. The per unit penalty in this case is approximately \$19,500.00 per non-yard truck and \$37,000 per RTG.

This penalty was calculated by considering all factors specified in Health and Safety Code sections 42403 and 43024, including the fact that STS was able to prove it purchased compliant equipment but did not receive compliant equipment and by the time STS became aware of the issue, it was too late to seek remedy from the other company. Also, STS came into compliance quickly and has cooperated 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 in this case is Health and Safety Code section 39674 because STS allegedly failed to comply with section 2479 of the CHE Regulation, which was adopted under the authority of Health and Safety Code section 39674, et seq.

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 provisions cited above do prohibit emissions above a specified level. However, since the hours of operation of the noncompliant units involved

and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (2) STS acknowledges that ARB has complied with Health and Safety Code section 39619.7 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health and Safety Code section 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. However, since the hours of operation of the noncompliant units involved and their individual emission rates are not known, it is not practical for ARB to quantify the excess emissions.
- (3) 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 case negotiations, and the potential costs 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. Penalties in future cases might be smaller or larger on a per unit basis.
- (4) The penalty in this case was based in part on confidential business information provided by STS that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and STS that ARB does not retain in the ordinary course of business. Accordingly, ARB will not release any submissions by STS that are protected under the Evidence Code to any third party unless required by law. The penalty also reflects ARB's assessment of the relative strength of its case against STS, 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 STS may have secured from its actions.

V. STIPULATED CONSENT JUDGMENT

- (1) The Parties stipulate to the entry of a Consent Judgment if STS defaults on any of the terms and conditions of this Agreement and hereby waives the right to challenge a Consent Judgment based on the terms of this Agreement. Before declaring a default of the terms and conditions of this Agreement, ARB shall first provide STS 10 calendar days written notice of the claimed default and request to cure.

- (2) The Consent Judgment does not constitute evidence of an admission by STS regarding any issue of law or fact alleged in the Agreement but sets forth the obligations of STS and constitutes the complete, final, and exclusive agreement between ARB and STS.
- (3) ARB expressly reserves the right to bring an enforcement action based on violations of law not covered in this Agreement and to seek whatever fines, penalties, or remedies provided by law, including injunctive relief.
- (4) In the event ARB seeks Consent Judgment based on STS's default under this Agreement, the Parties agree to the following:
- a. Superior Court of California, County of Sacramento (Court) has jurisdiction over the Parties and of the subject matter of this action;
 - b. Venue is proper in this Court;
 - c. The Court has personal jurisdiction over STS for purposes of enforcing the terms of the Consent Judgment; and
 - d. Obligations under this Agreement shall be deemed the terms and conditions of the Consent Judgment.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Dated: 4/7/2017

By: 

(Signature)

Printed Name: Richard W. Corey
Title: Executive Officer

Seaside Transportation Services, LLC

Dated: March 22, 2017

By: Damian J. Martinez

(Signature)

Printed Name: Damian Martinez
Title: Appointed liquidator