

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into between the State of California Air Resources Board (CARB), principally located at 1001 I Street, Sacramento, California 95814, and The China Navigation Company Pte Ltd (CNCo), principally located at 300 Beach Road #28-01, The Concourse, Singapore 199555

### RECITALS

- (1) Health and Safety Code (H&SC) 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, CARB identified particulate matter from diesel-powered engines as a TAC.
- (2) California Code of Regulations (CCR), title 13, section 2299.2 (13 CCR § 2299.2) and CCR, title 17, section 93118.2 (17 CCR § 93118.2) applies to any person who owns, operates, charters, rents, or leases any ocean-going vessel (OGV) that operates in Regulated California Waters (RCW).
- (3) The regulation's operational requirements for fuel sulfur content limits for auxiliary diesel engines, main engines, and auxiliary boilers are set forth in 13 CCR § 2299.2 (e) (1) and 17 CCR § 93118.2 (e) (1).
- (4) The regulation's recordkeeping, reporting, and monitoring requirements are set forth in 13 CCR § 2299.2 (e) (2) and 17 CCR § 93118.2 (e) (2).
- (5) Under 13 CCR § 2299.2 (f) and 17 CCR § 93118.2 (f), any failure to meet the regulation's requirements, "including but not limited to the applicable fuel sulfur content limits; recordkeeping requirements; and Noncompliance Fee provision shall constitute a single, separate violation of this section for each hour that a person operates an OGV in RCW until such provision, criteria or requirement has been met."
- (6) Failure to properly complete the operational requirements of the regulation is a violation of State Law resulting in penalties. H&SC sections 39674, 39675, 42400 et seq., 42402 et seq., and 42410, authorize civil or administrative penalties not to exceed up to \$10,000.00 for each day that the violation occurs.
- (7) CARB, with the cooperation of CNCo, has documented that CNCo failed to properly complete the operational requirements of the regulation on voyages

into California; that the *Powan* operated within RCW in violation of this regulation for 8 days intermittently between June 8, 2018 and June 25, 2018

- (8) CNCo admits the facts in Recitals 1 through 7 solely for purposes of this Agreement and any future enforcement action by CARB against CNCo. All admissions by CNCo in this Agreement shall only be valid for use by CARB in enforcing this Agreement and in any future CARB enforcement action against CNCo.
- (9) In order to resolve these violations CNCo has taken, or agrees to take, the actions enumerated below within the Terms and Release. CARB accepts this Agreement in termination and settlement of this matter.
- (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 violation and voluntarily agree to resolve this matter by means of this Agreement. Specifically, CARB and CNCo agree as follows:

#### TERMS AND RELEASE

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

- (11) The parties shall exchange signed copies of this Agreement by February 3, 2019. 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.

CNCo shall mail the executed Agreement in an envelope marked confidential by February 3, 2019 to:

Alexander Barber  
Air Pollution Specialist  
California Air Resources Board  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731

- (12) Upon execution of this Agreement, CNCo shall pay the sum of eighty thousand dollars (\$80,000 USD) to the California Air Pollution Control Fund.

The China Navigation Company Pte Ltd  
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CNCo shall submit the payment along with the enclosed Settlement Agreement Payment Transmittal Form by February 3, 2019 to:

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

- (13) The effective date of this Agreement shall be the date upon which CNCo executes this Agreement.
- (14) CNCo shall not violate 13 CCR § 2299.2 or 17 CCR § 93118.2, Air Toxic Control Measure (ATCM).
- (15) CNCo shall accurately comply with fuel switchover and keep accurate records.
- (16) This Agreement constitutes the entire agreement and understanding between CARB and CNCo concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between CARB and CNCo concerning the subject matter hereof.
- (17) This Agreement shall apply to and be binding upon CNCo and its officers, directors, receivers, trustees, employees, successors and assignees, parent corporation, and subsidiaries, if any, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (18) The terms and conditions set forth in this Agreement shall remain valid and enforceable notwithstanding any future violations that may occur.
- (19) No agreement to modify, amend, extend, enlarge, 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.
- (20) 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 shall remain in full force and effect.
- (21) 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.

- (22) 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.
- (23) 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).
- (24) **Penalty Determination**

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 H&SC section 43024 (H&SC § 43024).

The per unit penalty in this case is a maximum of \$10,000.00 per day for strict liability violation pursuant to H&SC section 39674 (H&SC § 39674). The vessel *Powan* operated on fuel within RCW that did not meet the distillate fuel standard for 8 days in violation of the regulation. The penalty obtained in this case is \$10,000.00 per day for a total penalty of \$80,000.00 USD after considering all factors specified in H&SC § 43024. In particular, the penalty reflects penalties obtained in other OGV violation cases.

**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 H&SC § 39674 because CNCo failed to comply with ATCM adopted under H&SC section 39600 et seq.

**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.**

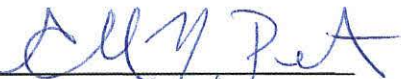
Since CARB has alleged that the fuel used did not meet regulatory requirements, all of the emissions from it were excess and illegal. Without information on engine usage and emission rates, however, quantifying these excess emissions is not practicable.

- (25) CNCo acknowledges that CARB has complied with H&SC section 39619.7 in settling this case. Specifically, CARB has considered all relevant facts, including those listed at H&SC §§ 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 operation of any main or auxiliary diesel engine or auxiliary boiler within RCW with distillate fuel above 0.1 percent sulfur content.
- (26) 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 cost and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.
- (27) The penalty in this case was also based on confidential settlement communications between CARB and CNCo that CARB does not retain in the ordinary course of business. Accordingly, CARB will not release any submissions by CNCo that are protected under the Evidence Code to any third party unless required by law. The penalty also reflects CARB's assessment of the relative strength of its case against CNCo, 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 CNCo may have secured from its actions.
- (28) Now therefore, in consideration of the payment on behalf of CNCo to the California Air Pollution Control Fund, CARB hereby releases CNCo and its principals, officers, agents, affiliates, parent companies, subsidiaries, predecessors, and successors from any and all claims for past violations of 13 CCR § 2299.2 and 17 CCR § 93118.2, CARB may have based on the circumstances described in paragraph (7) of the Recitals.
- (29) Each of the undersigned represents and warrants that he or she has full power and authority to enter into this Agreement.

The China Navigation Company Pte Ltd  
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Acknowledged And Accepted By:

**California Air Resources Board**

By: 

Name: Ellen M. Peter  
Title: Chief Counsel  
Date: 1/29/2019

**The China Navigation Company Pte Ltd**





By: \_\_\_\_\_

Name: **Stuart Jones**  
Title: **Fleet Director**  
Date: **18-01-2019**