SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into between the State of California Air Resources Board (ARB), principally located at 1001 I Street, fifth floor, Sacramento, California 95814, and Ancon Marine, principally located at Port of Long Beach, 18518 S. Susanna Road, Rancho Dominguez, California 90221 and Port of San Diego, California 92101.

RECITALS

(1) Health and Safety Code (H&SC) section 39650-39675 (H&SC §§ 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, ARB identified particulate matter (PM) from diesel-powered engines as a TAC. Mobile cargo handling equipment (CHE) is powered by diesel engines that emit toxic PM. Chapter 9, Division 3, California Code of Regulations (CCR), title 13, section 2479 (13 CCR § 2479) CHE regulation, regulates emissions of diesel PM from CHEs.

(2) The purpose of 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) 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 13 CCR § 2479.

(5) Failure to comply with CHE regulation is a violation of State Law. H&SC sections 39674, 39675, and 42402 et seq. (H&SC §§ 39674, 39675, 42402 et seq) authorize civil penalties not to exceed $1,000.00 to $10,000.00 for each day in which that the violation occurs.

(6) ARB Enforcement Division staff, with the cooperation of Ancon Marine, has determined that Ancon Marine committed violations of CHE regulation with respect to Ancon Marine's CHE in California, that do not conform to the requirements of 13 CCR § 2479. These violations involve the lease, rental, purchase, and ownership of CI mobile CHE that operates at Ancon Marine's California port facilities.

(7) In order to resolve these violations, Ancon Marine has taken, or agrees to take, the actions enumerated below, within the Terms and Release. Further, ARB accepts this Agreement in termination and settlement of this matter.

(8) 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 violations and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and Ancon Marine agree as follows:

TERMS AND RELEASE

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

(1) Upon execution of this Agreement, Ancon Marine shall pay a civil penalty of $52,500.00. Payment shall be made in 3 monthly payments as described below, beginning on **December 15, 2014**.

SETTLEMENT AGREEMENT AND RELEASE BETWEEN ARB AND **Ancon Marine**:

Payment Due Date:	**In the Amount of and Paid to:**	
12-15-14	**$13,125.00**	paid to **San Joaquin Valley Air Quality Management District School Bus Diesel Particulate Filter Retrofit Supplemental Environmental Project**
	$13,125.00	paid to **Air Pollution Control Fund**
1-15-15	**$13,125.00**	paid to **Air Pollution Control Fund**
2-15-15	**$13,125.00**	paid to **Air Pollution Control Fund**

Please submit the signed Settlement Agreement and each payment by the applicable payment due date along with the corresponding "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

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

(2) Effect of Untimely Payment. If any payment is more than 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, Ancon Marine shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(3) It is agreed that if Ancon Marine, including its subsidiary or parent company, at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving Ancon Marine, its subsidiary, or parent

company, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against Ancon Marine, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of Ancon Marine's, its subsidiary, or parent company's properties, or if any deposit account or other property of Ancon Marine, its subsidiary, or parent company be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or Ancon Marine, its subsidiary, or parent company takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.

(4) If the Attorney General files a civil action to enforce this Agreement, Ancon Marine shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(5) Ancon Marine shall not violate 13 CCR § 2479.

(6) Ancon Marine has come into compliance with the CHE regulation by either selling, retiring, retrofitting, or replacing the noncompliant equipment in compliance with the requirements of 13 CCR § 2479 and has provided documentation that the violations have been corrected.

(7) This Agreement constitutes the entire agreement and understanding between ARB and Ancon Marine concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Ancon Marine concerning the subject matter hereof.

(8) 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.

(9) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

(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) 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.

(12) SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (see H&SC section 39619.7). This information, which is provided throughout this Agreement, is summarized here.

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 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 $52,500.00 over an unspecified number of days of violation is for 4 noncompliant units. The per unit penalty in this case is $13,125.00 which is approximately 100 percent of the price to retrofit each unit and bring it into compliance with CHE regulation, discounted by 25 percent because this is an innocent, first time violation and that Ancon Marine has cooperated with the investigation. This penalty was calculated by considering all factors specified in H&SC section 42403 and 43024.

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 Ancon Marine failed to comply with the Air Toxic Control Measure for In-Use Strategies to Control Emissions from Diesel Engines, CCR, title 13, sections 2700-2711, which was adopted under authority of 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.

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.

(13) Ancon Marine acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at H&SC § 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.

(14) 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 cases negotiation, 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. Penalties in future cases might be smaller or larger on a per unit basis.

(15) The penalty in this case was based in part on confidential business information provided by Ancon Marine 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 Ancon Marine that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against Ancon Marine, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage that Ancon Marine may have secured from its actions.

(16) Now therefore, in consideration of the payment on behalf of Ancon Marine to ARB, ARB hereby releases Ancon Marine and their principals, officers, agents, predecessors, and successors from any and all claims for past violations of CHE regulation alleged in Recital paragraph 6. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: _____
Name: Ellen M. Peter
Title: Chief Counsel
Date: 1/13/2015

Ancon Marine

By: _____
Name: Blake Hardin
Title: Managing Director
Date: 12/19/14