# SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is entered into between the State of California Air Resources Board (ARB), principally located at 1001 I Street, Sacramento, California 95814, and Kitaura Kaiun Co., LTD (KKC), principally located at 2-2-5 Minamihorai-Cho, Imabari City, Ehime Pref, Japan.

## RECITALS

(1) Health and Safety Code (H&SC) sections 39650-39675 (H&SC §§ 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, ARB identified particulate matter from diesel-fueled engines as a TAC.

(2) California Code of Regulations (CCR), title 13, section 2299.2 (13 CCR § 2299.2) (b) provides that the regulation applies to any person who owns, operates, charters, rents, or leases any ocean-going vessel that operates in Regulated California Waters (RCW).

(3) 13 CCR § 2299.2 (e) (1), sets forth the operational requirements for fuel sulfur content limits for auxiliary diesel engines, main engines, and auxiliary boilers.

(4) 13 CCR § 2299.2 (e) (2) sets forth the recordkeeping, reporting, and monitoring requirements.

(5) ARB, with the cooperation of KKC, has documented that KKC failed to properly complete the operational requirements of the regulation on June 1-2, 2014. On these dates, the vessel *NYK Meteor* operated within RCW on heavy fuel oil in violation of this regulation. Also on June 2, 2014 the vessel *NYK Meteor* visited the Port of Los Angeles.

(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 (H&SC §§ 39674, 39675, 42400 et seq., 42402 et seq., 42410), authorize civil or administrative penalties not to exceed one thousand dollars ($1,000.00) or ten thousand dollars ($10,000.00) for each day that the violation occurs.

(7) Any person who owns, operates, charters, rents, or leases any ocean-going vessel that operates in RCW, can elect to pay a Non-Compliance Fee (NCF).

Persons shall pay the applicable fees prior to leaving the California port or at a later date approved by the Executive Officer. The NCF for a 1st Port Visited is $45,500. As well, the NCF is halved for vessels that use compliant fuel is obtained during their port visit, use that fuel in port as well upon departure from that port while in regulated waters.

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

(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 above-listed violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and KKC agree as follows:

## TERMS AND RELEASE

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

(1) Upon execution of this Agreement, the sum of thirty thousand two hundred and fifty dollars ($30,250.00) shall be paid on behalf of KKC within seven (7) business days following the execution of this agreement as follows: **$30,250.00** to the **California Air Pollution Control Fund** (APCF). Checks shall be made payable to the California Air Pollution Control Fund. If electronic payment is needed, contact Alexander Barber at abarber@arb.ca.gov for this information. Checks with the signed agreement shall be sent to:

Mr. Alexander Barber
Air Pollution Specialist / Investigator
Enforcement Division
Air Resources Board
9480 Telstar Ave. No. 4
El Monte, CA 91731

(6) KKC shall not violate 13 CCR § 2299.2, nor CCR, title 17, section 93118.2 ATCM.

(6) KKC shall accurately comply with fuel switchover and keep accurate records.

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

(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) 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.

(7) 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.

(8) 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.

(9) 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 settlement 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 penalty in this case is a maximum of $10,000.00 per unit per day for strict liability violations pursuant to H&SC § 39674. Alternatively, instead of performing the fuel switchover, the person who owns, operates, charters, rents, or leases any ocean-going vessel that operates in RCW, can elect to pay the NCF for each port visit. For example, the NCF for a 1st Port Visited is a $45,500 Per-Port Visit Fee. Persons must pay the applicable fees prior to leaving the California port or at a later date approved by the Executive Officer. The penalty obtained in this case is $1,000.00 per unit per day plus the $22,750 NCF halved, for a total penalty of $30,250.00 after considering all factors specified H&SC § 43024. In particular, the penalty reflects penalties obtained in other ocean-going vessel fuels violation cases and the cooperation of KKC 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 H&SC § 39674 because KKC failed to comply with the ATCM adopted under H&SC § 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 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.

(10) KKC 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 §§ 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. However, since the exact hours of noncompliant operation and the individual emission rates of the engines in violation are not known, it is not practical to quantify the excess emissions.

(11) 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 was discounted in the matter based on the fact that this was a first time violation, and the violator made unusually diligent efforts to comply and to cooperate with the investigation. Penalties in future cases might be smaller or larger on a per unit basis.

(12) The penalty reflects ARB's assessment of the relative strength of its case against KKC, 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 KKC may have secured from its actions.

(13) Now therefore, in consideration of the payment on behalf of KKC to the APCF, ARB hereby releases KKC and its principals, officers, agents, predecessors and successors from any and all claims for past violations of H&SC §§ 39650-39675

and 13 CCR § 2299.2, which ARB may have based on the circumstances described in paragraph (3) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

**California Air Resources Board**

By: Ellen M. Peter

Name: Ellen M. Peter
Title: Chief Counsel
Date: 8/5/2014

**Kitaura Kaiun Co., LTD**

By: Jin Watanabe

Name: JIN WATANABE
Title: Director
Date: 22th July 2014