# 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 MOL Ship Management (Hong Kong) Company, Ltd. (MOL), principally located at Unit 2601, 26/F, Tower 2, Ever Gain Plaza, 88 Container Port Road, Kwai Chung, N.T., Hong Kong

## 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 from diesel-powered engines as a TAC.

(2) California Code of Regulations (CCR), title 13, section 2299.2 (13 CCR § 2299.2) (b) and CCR, title 17, section 93118.2 (17 CCR § 93118.2) (b) provide that the regulation applies to any person who own, operates, charters, rents, or leases any ocean-going vessel (OGV) that operates in Regulated California Waters (RCW).

(3) 13 CCR § 2299.2 (e) (1) and 17 CCR § 93118.2 (e) (1) set 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) and 17 CCR § 93118.2 (e) (2) set forth the recordkeeping, reporting, and monitoring requirements.

(5) 13 CCR § 2299.2 (f) and 17 CCR § 93118.2 (f) set forth that 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 ocean-going vessel in Regulated California Waters 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 (H&SC §§ 39674, 39675, 42400 et seq., 42402 et seq., 42410), authorize civil or administrative penalties not to exceed $1,000.00 or $10,000.00 for each day that the violation occurred.

(7) ARB, with the cooperation of MOL, has documented that MOL failed to properly complete the operational requirements of the regulation on one voyage into California. The *MOL Majesty* operated within RCW in violation of this regulation one time.

(8) In order to resolve these violations, MOL 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.

(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 MOL agree as follows:

## TERMS AND RELEASE

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

(1) Upon execution of this Agreement, the sum of seven thousand five hundred dollars ($7,500.00) USD shall be paid on behalf of MOL no later than September 30, 2015, as follows:

- $7,500.00 USD to the California Air Pollution Control Fund

Please submit the payment along with the enclosed Settlement Agreement Payment Transmittal Form to:

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

Please mail the executed Agreement in an envelope marked confidential to:

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

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

(3) MOL shall not violate 13 CCR § 2299.2 or 17 CCR § 93118.2, Air Toxic Control Measure (ATCM).

(4) MOL shall accurately comply with fuel switchover and keep accurate records.

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

concerning the subject matter hereof.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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 penalty in this case is a maximum of $10,000.00 per port visit for strict liability violation pursuant to H&SC § 39674. The vessel *MOL Majesty* operated on fuel that did not meet the 0.1 percent sulfur standard within RCW in violation of the regulation. The penalty obtained in this case is a total of $7,500.00 USD after considering all factors specified in H&SC § 43024. In particular, the penalty reflects penalties obtained in other OGV violation cases.

The penalty was reduced based on the fact that this was a first time violation and the violator made diligent efforts to comply and to cooperate 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 MOL 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 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.

(11) MOL 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 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. 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.

(12) 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.

(13) The penalty reflects ARB's assessment of the relative strength of its case against MOL, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage that MOL may have secured from its actions.

(14) Now therefore, in consideration of the payment on behalf of MOL to the California Air Pollution Control Fund, ARB hereby releases MOL and its principals, officers, agents, predecessors, and successors from any and all claims for past violations of 13 CCR § 2299.2 and 17 CCR § 93118.2, ARB may have based on the circumstances described in paragraph (7) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

**California Air Resources Board**

By: _____
Name: Dr. Todd P. Sax
Title: Chief, Enforcement Division
Date: 9/9/15

**MOL Ship Management (Hong Kong) Company, Ltd.**

By: _____
Name: Kenji Asaki
Title: Managing Director
Date: 31/08/2015