

## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and SSA (SSA) Terminals (Oakland), LLC with its principal location at 1717 Middle Harbor Road Oakland, CA 94607, (collectively, the "Parties," or individually, "Party").

### LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates the reduction of the emission of toxic air contaminants (TAC). CARB has determined that particulate matter (PM) from diesel-fueled engines is a TAC. (Health & Saf. Code §§ 39650-39675.)
- (2) Regulation. CARB adopted the *Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards* (CHE Regulation) to reduce diesel PM and criteria pollutant emissions from compression ignition (CI) mobile cargo handling equipment (CHE) that operate at ports and intermodal rail yards in the State of California. (Cal. Code Regs., tit.13, § 2479.)
- (3) Regulatory Provisions. Any person who conducts business in California, who sells, offers for sale, leases, rents, purchases, owns, or operates any CI mobile CHE at any California port or intermodal rail yard must meet the performance requirements outlined in the CHE Regulation. (Cal. Code Regs., tit.13, § 2479.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to ten thousand dollars (\$10,000) for strict liability violations, respectively, for each day in which the violation occurs. (Cal. Code Regs., tit.13, Cal. Code Regs., tit.13, § 2479; Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., and 42410.)

### CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, SSA Terminals (Oakland), LLC was organized under the laws of the State of California doing business as a Limited Liability Company and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) **CHE040120\_SSA OAK**, which was issued on July 24, 2020 as it pertains to the SSA Oakland Terminal located at 1717 Middle Harbor Road in Oakland California. This Settlement Agreement does not settle any other violations at any other terminals or any other NOVs. CARB alleges that SSA violated the CHE Regulation by operating CHE at a port or rail facility in California, with twenty-nine pieces of CHE that did not conform to the requirements of the CHE Regulation as outlined in Notice of Violation CHE040120\_SSA OAK. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against SSA

for each and every piece of equipment involved in the violation(s) and each day.

- (7) Acknowledgment. SSA admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) Consideration. 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 Settlement Agreement. In order to resolve the violations described herein, SSA has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

### TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against SSA for the alleged violations referred to above in the Legal Background and Case Background, and SSA's agreement to complete all terms and conditions set forth below, CARB and SSA agree as follows:

- (9) Settlement Amount. SSA shall pay a total civil penalty of thirty seven thousand five hundred dollars (**\$37,500.00 USD**). SSA shall make all payments within 30 calendar days from the date CARB notifies SSA of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. SSA shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. SSA is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to SSA in accordance with Paragraph 14 (Notices).
- (11) Compliance Plan. SSA shall submit an annual report for 2020, 2021 and 2022 in excel spreadsheet format of all current CHE equipment, including new and retired CHE owned or operated by SSA at the SSA terminal facility at the Port of Oakland. The report shall include copies of all smoke opacity tests for CHE requiring smoke tests, maintenance records for CHE that failed the required smoke test to ensure that SSA complies with all provisions of the laws and regulations outlined in the Legal Background, and all training records required in Paragraph 12. The report shall be delivered electronically to (a) the address or email in Paragraph 14 (Notices);

and (b) H. Cuauhtémoc Pelayo no later than October 1, 2020, October 1, 2021 and October 1, 2022, to the following email address:  
[Hector.Pelayo@arb.ca.gov](mailto:Hector.Pelayo@arb.ca.gov).

- (12) California Council on Diesel Education and Technology I (CCDET III) Training. SSA shall require the company maintenance manager (or equivalent) and all staff and contractors performing opacity tests attend the CCDET III class, (SAE J1667 Snap Acceleration Smoke Test Procedure for Cargo Handling Equipment) as described on the CCDET webpage, [ccdet.org](http://ccdet.org). This class is conducted by various California Community Colleges and instructs attendees on compliance with the CHE smoke inspection program. Contractors must have completed the course within the last four years from the date of hire. SSA shall provide proof of CCDET III completion to CARB within six months of the date of this Settlement Agreement and maintain it in each applicable employee's or contractor's file for the term of his or her employment as well as be maintained with the annual records and provide them in the annual report as part of the Compliance Plan.
- (13) Documents. SSA shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, a copy of the Payment Transmittal Form(s), and all documents identified in the Compliance Plan, to the address or email in Paragraph 14 (Notices).
- (14) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board  
Enforcement Division / Settlement Agreements  
Field Operations Branch / Railroad & Marine Enforcement Section  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731  
[Settlement\\_Agreement@arb.ca.gov](mailto:Settlement_Agreement@arb.ca.gov)

As to SSA Terminals (Oakland), LLC:

SSA Terminals (Oakland), LLC  
1717 Middle Harbor Road Oakland, CA 94607  
[Kelly.Garber@SSAMarine.com](mailto:Kelly.Garber@SSAMarine.com)

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (15) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, SSA shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (16) Repeat Violations. SSA agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (17) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background, and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 7 pages and 35 paragraphs.
- (18) Binding Effect. This Settlement Agreement binds SSA, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (19) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (20) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (21) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (22) Choice of Law. This Settlement 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.
- (23) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.

- (24) Not Tax Deductible. For purposes of this Settlement Agreement, SSA shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
- (25) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (26) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.
- (27) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (28) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (29) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (30) Release. In consideration of the full completion of civil penalty, and all other undertakings above, CARB hereby releases SSA and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on Paragraph 6 above.
- (31) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

### PENALTY BASIS

- (32) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of ten thousand dollars (\$10,000) per day under Health and Safety Code section 39674, for violations of the CHE Regulation. (Cal. Code Regs., tit.13, § 2479.) The penalty of thirty seven thousand five hundred dollars over an unspecified number of days of violation is for twenty nine pieces noncompliant CHE. The per unit penalty in this case is approximately \$1,293.10 per noncompliant CHE.
- (33) Emissions. The provisions cited above do prohibit emissions above a specified level. Without information on engine usage and emission rates, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the equipment did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- (34) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.
- (35) Confidential Business Information. CARB based this penalty in part on confidential business information provided by SSA and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: \_\_\_\_\_/S/\_\_\_\_\_

Name: \_\_\_\_\_Ellen M. Peter\_\_\_\_\_

SSA Terminals (Oakland), LLC  
Settlement Agreement  
Notice of Violation: CHE040120\_SSA OAK

Title: Chief Counsel

Date: September 13, 2020

**SSA Terminals (Oakland), LLC**

Signature: /S/

Name: Jaime L. Neal

Title: Senior Vice President & Treasurer

Date: September 8, 2020