SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement And Release (Agreement) is entered into between the State of California Air Resources Board (ARB) with its principal office at 1001 I Street, Sacramento, California 95814, and Petro-Diamond Inc. with its principal place of business at 1920 W Lugger Way, Long Beach, California 90813. The agreement concerns NOV F071013-PDIT-RVP.

RECITALS

(1) California Code of Regulations (hereinafter "CCR"), title 13, Section 2261[1] (Applicability of Standards; Additional Standards) provides in pertinent part as follows: "(b) Applicability of the CaRFG Phase 3 Standards. (1)(B) The remaining CaRFG Phase 3 standards and compliance requirements contained in this subarticle shall apply to all sales, supplies, or offers of California gasoline occurring on or after December 31, 2003."

(2) Section 2262.4, subdivision (a)(1) provides, "No person shall sell, offer for sale, supply, offer for supply, or transport California gasoline which exceeds the applicable cap limit for Reid vapor pressure within each of the air basins during the regulatory period set forth in section (a)(2)."

(3) Section 2262.4, subdivision (a)(2)(A) identifies the period from April 1 through October 31 as the RVP regulatory control period for the South Coast Air Basin.

(4) Section 2266.5, subdivision (b)(6)(A) specifies the cap limits for California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) that has already been supplied from its production or import facility. The Reid Vapor Pressure (RVP) cap limit for Phase 3 gasoline is 5.99 pounds per square inch (psi) during the warmer weather months identified in section 2262.4.

(5) Section 2266.5, subdivision (a)(1) provides in pertinent part, "All of the standards and requirements in section[] ... 2262.4... pertaining to California gasoline or transactions involving California gasoline also apply to CARBOB or transactions involving CARBOB. Whenever the term 'California gasoline' is used in the sections identified in the preceding sentence, the term means 'California gasoline or CARBOB.'"

(6) Health and Safety Code section 43027, subdivision (c) states, "[a]ny person who violates any provision of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, exclusive of the documentation requirements specified in subdivision (d), is strictly liable for a civil penalty of not more than thirty-five thousand dollars ($35,000)."

[1] All references are to the California Code of Regulations, title 13, unless otherwise specified.

(7) Health and Safety Code section 43030, subdivision (a) states, "for the penalties prescribed in sections 43027..., each day during any portion of which a violation occurs is a separate offense."

(8) Health and Safety Code section 43031, subdivision (b) states, "In determining the amount assessed, ...the state board, in reaching any settlement, shall take into consideration all relevant circumstances, including, but not limited to, all of the following: (1) The extent of harm to public health, safety, and welfare caused by the violation. (2) The nature and persistence of the violation, including the magnitude of the excess emissions. (3) The compliance history of the defendant, including the frequency of past violations. (4) The preventive efforts taken by the defendant, including the record of maintenance and any program to ensure compliance. (5) The innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods. (6) The efforts to attain, or provide for, compliance. (7) The cooperation of the defendant during the course of the investigation and any action taken by the defendant, including the nature, extent, and time of response of any action taken to mitigate the violation. (8) For a person who owns a single retail service station, the size of the business."

(9) ARB alleges that on July 10 and 11, 2013, Petro-Diamond sold, offered for sale, supplied, and/or transported CARBOB with an RVP exceeding 5.99 psi from one Premium-grade tank at their Long Beach Terminal.

(10) The Petro Diamond Terminal is located in Long Beach, California, which is located in the South Coast Air Basin.

(11) ARB alleges that the sale, offer for sale, supply, and/or transporting the high RVP CARBOB was unlawful and in violation of California Code of Regulations, title 13, section 2266.5, subdivision (b)(6)(A).

(12) ARB discovered the violation and Petro Diamond promptly and fully cooperated with ARB throughout its investigation.

(13) Petro Diamond has not had a violation of this type within the last three years.

(14) Petro Diamond contained the non-compliant CARBOB in its storage tank at their Long Beach Terminal, designated the tank as a production tank, and reblended the CARBOB to bring it into compliance prior to releasing it for sale in California.

(15) Petro Diamond alleges that the CARBOB at issue did not cause harm to public health, safety or welfare.

(16) Petro Diamond alleges that the CARBOB at issue had a high RVP level due to the recirculation of condensate from their vapor recovery unit, which Petro Diamond alleges may have resulted in a slightly higher RVP.

(17) Petro Diamond admits the facts described in recital pargraphs 1 – 11, but denies any lilability arising therefrom.

(18) Petro Diamond is entering into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. Further, ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

TERMS AND RELEASE

In consideration of ARB not filing a legal action against Petro Diamond for the violations alleged above, and in consideration of the other terms set out below, ARB and Petro Diamond agree as follows:

(1) As a condition of this Settlement Agreement, within 15 days after the last party signs this Agreement, Petro Diamond shall pay the sum of fifty thousand dollars ($50,000) as a penalty. Payment shall be made in check form as described below:

- $37,500 made out to the **California Air Pollution Control Fund**
- $12,500 made out to the **San Joaquin Valley Air Pollution Control District**, with a notation on the check memo line "**For School Bus Retrofit SEP**"

Upon receiving the fully executed Settlement Agreement, please complete Attachment A and return to:

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

(2) If the Attorney General files a civil action to enforce this settlement agreement, Petro Diamond shall pay all costs of enforcing the Agreement, including expert fees, reasonable attorney's fees, and costs.

(3) It is agreed that the penalty described in terms and release paragraph (1) is punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish Petro Diamond for violations of state environmental statutes, and this penalty is payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that this penalty imposed on Petro Diamond by ARB arising from the facts described in recital paragraphs 1–11 are nondischargeable under 11 U.S.C § 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 benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

(4) This Agreement shall apply to and be binding upon Petro Diamond and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

(5) Now therefore, in consideration of the payment by Petro Diamond to the California Air Pollution Control Fund in the amount specified above, ARB hereby releases Petro Diamond and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, and subsidiary and parent corporations from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs 1-11. The undersigned represent that they have the authority to enter this Agreement.

(6) This Agreement constitutes the entire agreement and understanding between ARB and Petro Diamond concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between ARB and Petro Diamond concerning these claims.

(7) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.

(8) Advice of Counsel. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.

(9) 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.

(10) 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 to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.

(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) Waiver. The failure of any Party to enforce any provision of this 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 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 Agreement or otherwise provided by law.

(13) **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires ARB to provide information on the basis for the penalties it seeks. This required information, which is provided throughout this settlement agreement, is summarized here. ARB alleges the following:

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 Health and Safety Code section 43031, subdivision (b).

The per unit penalty in this case is a maximum of $35,000 per day per strict liability violation. ARB alleges that high RVP CARBOB was supplied over a time period of two days. The penalty obtained in this case is $25,000 per day. The lower penalty reflects the consideration of a number of facts, including: that this was an unintentional violation, Petro Diamond has not had an RVP violation within the last three years, and Petro Diamond's 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.

ARB alleges that the penalty provisions being applied in this case, Health and Safety Code sections 43027 and 43030, are appropriate because Petro Diamond allegedly sold, offered for sale, supplied, or offered for supply and/or transported CARBOB in California in violation of California Code of Regulations, title 13, section 2266.5, subdivision (b)(6)(A) and that such acts were not due to negligence or willful and intentional misconduct.

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 not prohibit emissions above a specified level. ARB alleges that since the fuel did not meet California air pollution standards, any emissions attributable to them are illegal. However, it is not practicable to quantify these emissions because the information necessary to do so is not available.

(15) Petro Diamond 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 Health and Safety Code section 43031, 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 not being assessed under provision of law that prohibits the emission of pollutants at a specified level.

(16) 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, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain number of days considered together with the complete circumstances of this case. The penalty was discounted in this matter based on the fact that this was an innocent violation and because Petro Diamond made unusually diligent efforts to comply, to cooperate with the investigation and to mitigate any potential emissions consequences. Penalties in future cases might be smaller or larger on a per day basis.

(17) The penalty in this case was based in part on confidential business information provided by Petro Diamond that has not been retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and Petro Diamond 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 Petro Diamond, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Petro Diamond may have secured from its alleged actions.

(18) This Agreement consists of seven (7) pages, eighteen (18) recitals, and eighteen (18) terms and release paragraphs.

CALIFORNIA AIR RESOURCES BOARD

By _____

Name: Ellen M. Peter
Title: Chief Counsel
Date: 10/16/2014

PETRO DIAMOND INC.

By _____

Name: MICHAEL F DOUGHERTY
Title: VP
Date: 9/22/14