

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") with its principal office at 1001 I Street, Sacramento, California 95814, and TESORO REFINING & MARKETING COMPANY, LLC (hereinafter "TESORO") with its principal place of business at 150 Solano Way, Martinez, CA 94553.

I. RECITALS

- (1) California Code of Regulations, title 13, section 2265(a)(2)(A)7 provides in pertinent part: "For a final blend starting to be sold or supplied from the production...facility on or after October 9, 2012, the producer...shall evaluate the candidate PM alternative specifications for gasoline subject to the CaRFG Phase 3 standards in accordance with the Air Resources Board's "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as last amended August 24, 2012, which is incorporated herein by reference."
- (2) California Code of Regulations, title 13, section 2265(a)(2)(B) provides, "If the PM alternative specifications being evaluated meet the criteria for approval in the applicable Predictive Model Procedures, the producer... shall notify the Executive Officer of: 1. The identity and location of the final blend; 2. the PM alternative specifications that will apply to the final blend, including for each specification whether it applies as a PM flat limit or a PM averaging limit; 3. the numerical values for percent change in emissions for oxides of nitrogen, total ozone forming potential, and potency-weighted toxic air contaminants as determined in accordance with the applicable Predictive Model Procedures; 4. The grade of gasoline of the final blend; 5. The location of the final blend with sufficient specificity to locate and sample the gasoline. This shall include, but is not limited to, the name of the facility, address, and identification of the storage tank."
- (3) California Code of Regulations, title 13, section 2265(a)(2)(B) further provides, "The notification shall be received by the Executive Officer before the start of physical transfer of the gasoline from the production...facility, and in no case less than 12 hours before the producer...either completes physical transfer or commingles the final blend."
- (4) California Code of Regulations, title 13, section 2266.5(a)(1) provides in pertinent part, "All of the standards and requirements in sections...2265...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.'"
- (5) Health and Safety Code section 43027(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)."

- (6) Health and Safety Code section 43031(b) states, "[i]n 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."
- (7) On March 9 and March 18, 2013, TESORO, a "producer," submitted two predictive model (PM) notifications for two batches of California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB), Batch Numbers 13-091 and 13-110. TESORO reported incorrect Reid Vapor Pressure (RVP) values on the PM notifications for the March 9, 2013 Batch number 13-091 and the March 18, 2013 Batch number 13-110.
- (8) In addition, TESORO failed to provide the timely, corrected notifications, i.e., before the start of physical transfer of the CARBOB from the production facility, and in no case less than 12 hours before TESORO either completed physical transfer or commingled the final blend.
- (9) TESORO alleges that the violations were caused by TESORO's reporting tool's software design flaw which inadvertently input the wrong RVP into their calculations for the PM specifications.
- (10) TESORO alleges that the CARBOB at issue did not cause harm to public health, safety, or welfare.
- (11) TESORO further alleges that both batches met the Predictive Model, and therefore, no excess emissions resulted.
- (12) TESORO fully cooperated with ARB's investigation.
- (13) TESORO admits the facts described in recitals 1-12, but denies any liability arising therefrom.
- (14) TESORO 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.

II. TERMS AND RELEASE

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

- (1) As a condition of this Agreement, within 15-days after the last party signs this Agreement, TESORO shall pay the total sum of fifty thousand dollars (\$50,000). Payment shall be made to the following as described below:
 - \$37,500 by cashier's check payable to the California Air Pollution Control Fund and
 - \$12,500 by cashier's check payable to the San Joaquin 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 along with payment to:

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

- (2) TESORO shall not seek to reduce any tax liability by virtue of paying the above amount.
- (3) This Agreement shall apply to and be binding upon TESORO 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.
- (4) Now therefore, in consideration of the payment by TESORO as described above, ARB hereby releases TESORO and its principals, officers, directors, agents, receivers, trustees, employees, parents, subsidiaries, predecessors, successors, and assignees, and each of their officers, directors, agents, and employees from, any and all claims that ARB may have based on the facts and allegations described in recital paragraphs 1-12. The undersigned represent that they have the authority to enter this Agreement.
- (5) The parties acknowledge that the agreements, statements, stipulations, and actions herein are made solely for the purpose of settling this matter economically and without litigation or further expense.
- (6) This Agreement constitutes the entire agreement and understanding between ARB and TESORO 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 TESORO concerning these claims.

- (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 to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.
- (8) 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.
- (9) 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.
- (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) 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) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code 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 Health and Safety Code section 43031.

The per unit penalty in this case is a maximum of \$35,000 per day per strict liability per violation. The penalty determined in this case is \$50,000 representing four violations. This reflects the facts that TESORO alleges the CARBOB met the applicable predictive model specifications, this was an unintentional violation, and because TESORO cooperated fully 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 Health and Safety Code section 43027(c) because TESORO failed to timely and correctly notify ARB before the start of physical transfer of the final blend of CARBOB, in violation of Title 13, California Code of Regulations, section 2265(a)(2) and to timely notify ARB of the correct specifications of the Predictive Models in violation of Title 13, California Code of Regulations, section 2265(b)(1)(A).

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. ARB alleges that since the sale or supply of the subject CARBOB was illegal, 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.

- (14) TESORO 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 & 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 being assessed under provision of law that prohibits the emission of pollutants at a specified level, but TESORO alleges no excess emissions resulted from the violations.
- (15) 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 in part on the fact that the violator made unusually diligent efforts to comply, to cooperate with the investigation, and alleges no excess emissions consequences. Penalties in future cases might be smaller or larger on a per day basis.
- (16) The penalty in this case was based in part on confidential financial information or confidential business information provided by TESORO 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 TESORO that ARB does not retain in the ordinary course of business either. The penalty is the product of an arm's length negotiation between ARB and TESORO and reflects ARB's assessment of the relative strength of its case against TESORO, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that TESORO may have secured from its actions.

(17) This Agreement consists of six (6) pages, fourteen (14) Recitals, and seventeen (17) Terms and Release paragraphs.

CALIFORNIA AIR RESOURCES BOARD

By Ellen M. Peter

Name Ellen M. Peter

Title Chief Counsel

Date 6/25/2015

**TESORO REFINING & MARKETING
COMPANY, LLC**

By Thomas A. Lu 

Name Thomas A. Lu

Title Vice President, Martinez Refinery

Date 6-5-15