

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 Ultramar Inc., dba Valero Wilmington Refinery (hereinafter Valero) with its principal place of business at 2402 East Anaheim Street, Wilmington, California 90744. The agreement concerns NOV F053111-VOR-DSL.

RECITALS

- (1) California Code of Regulations, title 13, section 2282(a)(1)¹ provides in pertinent part that "...no person shall sell, offer for sale, or supply any vehicular diesel fuel unless: (A) The aromatic hydrocarbon content does not exceed 10 percent by volume; or (B) The vehicular diesel fuel has been reported in accordance with all of the requirements of subsection (d), below, and: 1. The aromatic hydrocarbon content does not exceed the designated alternative aromatic hydrocarbon limit, and 2. Where the designated alternative aromatic hydrocarbon limit exceeds 10 percent by volume, the excess aromatic hydrocarbon content is fully offset in accordance with subsection (d), below..."
- (2) Section 2282(d)(2) provides, "The producer or importer shall notify the executive officer of the volume (in gallons) and the designated alternative limit of the final blend. This notification shall be received by the executive officer before the start of physical transfer of the diesel fuel from the production or import facility, and in no case less than 12 hours before the producer either completes physical transfer or commingles the final blend."
- (3) Section 2282(d)(5) allows the executive officer to enter into a protocol with a producer or importer for the purposes of specifying how the notification requirements in section 2282(d)(2) shall be applied to the producer's or importer's particular operations.
- (4) Section 2282(f)(1) provides, "Each producer shall sample and test for aromatic hydrocarbon content each final blend of vehicular diesel fuel which the producer has produced...The producer shall maintain, for two years from the date of each sampling, records showing the sample date, product sampled, container or other vessel sampled, final blend volume, and the aromatic hydrocarbon content... All diesel fuel produced by the producer and not tested as vehicular diesel fuel by the producer pursuant to this subsection, shall be deemed to have an aromatic hydrocarbon content exceeding 10 percent, unless the producer demonstrates that the diesel fuel meets the requirements of subsection (a)(1), above."
- (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

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

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 43030(a) states, "for the penalties prescribed in sections 43027..., each day during any portion of which a violation occurs is a separate offense."
- (7) ARB and Valero entered into a protocol, which provided that all supplies of diesel fuel from its Wilmington, California refinery would comply with the California diesel fuel regulations by means of the designated alternative limit (DAL) provisions found at California Code of Regulations, title 13, section 2282(d) until Valero provided a subsequent notification of a different compliance method. Such notification must be received by the Executive Officer before the start of physical transfer of the initial blend of the series from Valero's refinery, and in no case less than 12 hours before Valero either completes physical transfer or commingles that final blend.
- (8) On May 29, 2011, Valero dispensed diesel fuel, which was certified under the DAL compliance option, to a run down tank at its Wilmington, California terminal when a valve was accidentally left open. The run down tank previously contained diesel fuel components of an uncharacterized nature, which was not certified to the DAL provisions. This blend of diesel fuel, which was not certified to the DAL provisions, was loaded into four trucks and supplied via pipeline to Kinder Morgan. The rack was immediately shut down. Valero sampled and tested the blend of diesel fuel. A third party's tank, which received the Valero tender, was isolated, sampled, and tested.
- (9) May 29, 2011 occurred in the middle of a holiday weekend, Memorial Day weekend. When ARB's offices reopened on Tuesday, May 31, 2011, Valero made verbal and written communication to ARB of the foregoing events.
- (10) ARB alleges that the sale, offer for sale, supply, or offer for supply of diesel fuel that was not certified CARB diesel and for which notification was not made to ARB until after the start of physical transfer or commingling of the final blend was unlawful and in violation of section 2282.
- (11) Valero self-disclosed the violation and promptly and fully cooperated with ARB throughout its investigation.
- (12) Valero has not had a violation of this type within the last three years.
- (13) Valero immediately shutdown the rack upon discovery of the open valve. Valero also promptly contacted the third party to ensure that the tender was isolated.
- (14) ARB alleges that if the facts described in recital paragraphs 1-13 were proven, civil penalties could be imposed against Valero as provided in Health and Safety Code section 43027 and 43030.

- (15) ARB issued NOV F053111-VLOR-DSL (the NOV) related to the facts described above and alleges Valero violated various sections within the California Code of Regulations and/or Health and Safety Code as described herein and in the NOV. Valero's entry into this Agreement is not and shall not be construed as an admission of any underlying fact or liability associated with or relating to the conduct, actions or violations of law as alleged in the NOV.
- (16) Valero is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter (the NOV) with ARB. 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 Valero for the violations alleged above, and in consideration of the other terms set out below, ARB and Valero agree as follows:

- (1) As a condition of this Settlement Agreement, Valero shall pay the sum of twenty two thousand five hundred dollars (\$22,500) as a penalty. This amount shall be payable within 15 days after the last party signs this Agreement. Payment shall be made by check payable to the California Air Pollution Control Fund and addressed to:

Duong Trinh
Air Resources Board / Enforcement Division
9480 Telstar Avenue #4
El Monte, CA 91731
- (2) If the Attorney General files a civil action to enforce this settlement agreement, Valero shall pay all costs of investigating and prosecuting the action, 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 Valero 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 Valero by ARB arising from the facts described in recital paragraphs 1-13 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) Valero shall provide timely notifications to ARB in accordance with the protocol and/or section 2282.
- (5) This Agreement shall apply to and be binding upon Valero 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.
- (6) Now therefore, in consideration of the payment by Valero to the California Air Pollution Control Fund in the amount specified above, ARB hereby releases Valero 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 1-13. The undersigned represent that they have the authority to enter this Agreement.
- (7) This Agreement constitutes the entire agreement and understanding between ARB and Valero 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 Valero concerning these claims.
- (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) 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.
- (12) 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.
- (13) 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.

(14) **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.

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 violation. The penalty obtained in this case is \$22,500 per day. This reflects the facts that this was an unintentional violation, Valero has not violated the diesel regulations of this type within the last three years, and Valero'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 Valero allegedly sold, offered for sale, supplied, or offered for supply diesel fuel that was not certified CARB diesel and for which notification was not made to ARB until after the start of physical transfer or commingling of the final blend, in violation of section 2282.

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) Valero 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 Valero 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 Valero 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 Valero 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 Valero, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Valero may have secured from its alleged actions.

CALIFORNIA AIR RESOURCES BOARD

ULTRAMAR INC., A VALERO COMPANY

By Ellen M. Peter

Name: Ellen M. Peter

Title: Chief Counsel

Date: 10/10/2013

SB

By Mark Havens

Name: Mark Havens

Title: Director Technical Services

For Mark Phair, Vice President and General Manager

Date: 9-26-13