

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is entered into between the California Air Resources Board (CARB), 1001 I Street, Sacramento, California 95814, and BP Products North America (BP), 30 South Wacker Drive, Chicago Illinois 60606. The effective date (Effective Date) of this Agreement is the date it is fully executed.

I. RECITALS

- (1) The Global Warming Solutions Act of 2006 (Health & Safety Code § 38500 et seq.) authorized CARB to adopt regulations to reduce greenhouse gas (GHG) emissions. Pursuant to that authority, CARB adopted the Low Carbon Fuel Standard (LCFS), California Code of Regulations (CCR), title 17, section 95480 et seq.
- (2) The LCFS is crucial to incentivizing innovative fuels that will reduce GHG emissions. The regulation provides that fuel producers and importers generate deficits by supplying petroleum-based fuels, which have a carbon intensity (CI) higher than a stated annual CI standard. On the other hand, low-carbon fuel producers and importers can generate credits by supplying transportation fuels with a CI below the stated standard. The regulation requires all participating fuel producers and importers to report the volume of fuel they supply and the fuel's corresponding CI. The volume and CI determine the number of credits or deficits the fuel will generate when reported to CARB.
- (3) LCFS section 95491 requires reporting parties to submit quarterly and annual reports, each of which must contain a statement attesting to accuracy. For the fuels transactions in a quarterly report, the reporting party must include the fuel pathway code that corresponds with the reported fuel transaction.
- (4) LCFS section 95494(b) provides that each day that a required report remains unsubmitted, incomplete, or inaccurate constitutes a separate violation.
- (5) California Health & Safety Code section 38580(b) provides that any violation of the LCFS is subject to civil penalties. California Health & Safety Code section 43027(d) provides that any person who enters false information in, or fails to keep, any document required to be kept pursuant to the LCFS is strictly liable for civil penalties of up to \$25,000 per violation. California Health & Safety Code section 43027(c) provides that any person who other violates any other provision of the LCFS is strictly liable for civil penalties of up to \$35,000 per violation.
- (6) BP imports and supplies fuel to California. As alleged in NOV **F10112018-BP-RPT** which was issued on August 12, 2019, BP or agents thereof misreported and submitted quarterly LCFS fuel transactions reports using a certified LCFS fuel pathway CI that deviated from the actual CI of the fuel reported. Specifically, CARB alleged that these violations arose from BP's failure to disclose that the landfill

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associated with BP's reported fuel pathways used natural gas for process energy, resulting in a higher CI than associated with the approved and reported fuel pathways.

- (7) To resolve the violations alleged in the NOV, CARB and BP agree to the terms enumerated below.

II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against BP for the alleged violations referred to above, and in consideration of the terms set out below and BP's payment of the penalty and funding of Supplemental Environmental Project (SEP), CARB and BP agree as follows:

- (8) BP assumes full liability for the violations alleged in the NOV, with recognition that the fuel reporting entities and credit generators with LCFS responsibilities for the fuels transactions at issue in the NOV are Victor Valley Transit Authority, Athens Services, Questar Fueling Company, and San Diego Metropolitan Transit System. BP's assumption of liability is expressly limited to the violations alleged in the NOV and shall not create a presumption of liability in any future matter.
- (9) BP has agreed to a civil penalty in the amount of **one hundred and eighty-eight thousand dollars (\$188,000.00)** for the alleged violations in NOV **F10112018-BP-RPT**.
- (10) BP has agreed to undertake a SEP, as described in Attachment B, to offset a portion of the civil penalty, consistent with CARB's SEP policy.
- (11) Based on BP's agreements set forth in paragraphs 9-10, and in accordance with the procedures set forth in paragraphs 12-13, BP shall pay \$98,500.00 to the **AIR POLLUTION CONTROL FUND** (APCF), and BP shall pay the remaining \$89,500.00 to the SEP implementer, the **Coalition for a Safe Environment**.
- (12) Within 15 business days of the Effective Date, BP shall make a total payment of \$98,500.00 to the Air Pollution Control Fund (APCF). The payment along with the "Settlement Agreement Payment Transmittal Form" (Attachment A) shall be submitted to:

California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812-1436
- (13) Within 15 business days of the Effective Date, BP shall make a total payment of \$89,500.00 to the Coalition for a Safe Environment. The payment shall be

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submitted to:

Jesse N. Marquez, Executive Director
1601 N. Wilmington Blvd., Ste. B
Wilmington, California 90744

- (14) BP shall send a **copy** of all checks made to the APCF and the Coalition for a Safe Environment to :

Thomas Lopez, APS
California Air Resources Board
9480 Telstar Avenue, Suite 4
El Monte, California 91731

- (15) BP has agreed that by funding the SEP project, BP will not receive any direct or indirect benefit, and that whenever it publicizes a SEP or the results of the SEP, it will state in prominent manner that the project is being undertaken as part of the settlement of an enforcement action.
- (16) In the event the SEP is not fully implemented in accordance with the terms of the SEP agreement, CARB (as third party beneficiary) shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended based on timely and successful completion of any previously agreed upon interim milestone(s), to be deposited into the California Air Pollution Control Fund. Accordingly, BP shall assign any and all rights against the SEP implementer to CARB.
- (17) In consideration of the payments by BP to the California Air Pollution Control Fund and to the Coalition for a Safe Environment in the amounts specified above, CARB hereby releases BP and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and customers including Victor Valley Transit Authority, Athens Services, Questar Fueling Company, and San Diego Metropolitan Transit System, from any and all claims that CARB may have based on the allegations described in paragraph 6.

III. GENERAL PROVISIONS

- (18) This Agreement constitutes the entire agreement and understanding between CARB and BP concerning the subject matter hereof, and supersedes and replaces any and all prior negotiations and agreements of any kind of nature, whether written or oral, between CARB and BP concerning the subject matter hereof.
- (19) This Agreement shall apply to and be binding upon BP and its successors and assignees, parent corporations, and subsidiaries, if any; and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

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- (20) The terms and conditions set forth in this Agreement shall remain valid and enforceable notwithstanding any future violations that may occur.
- (21) 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.
- (22) Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Agreement remains in full force and effect.
- (23) The headings in this Agreement are not binding and are for reference only and do not limit, expand, or otherwise affect the contents of this Agreement.
- (24) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to choice-of-law rules.
- (25) The failure of either 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.
- (26) This Settlement Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement.
- (27) Each of the undersigned represents and warrants that he or she has full authority to enter into this Agreement.

IV. PENALTY DETERMINATION

- (28) Pursuant to Health and Safety Code section 39619.7, CARB must provide information on the basis for the penalty it seeks. This information is provided throughout this Agreement and the NOV and is also summarized below.

The manner in which the penalty amount was determined, including any per unit or per day 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.

Health and Safety Code sections 38580(b) and 43027(d) authorize a strict

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liability penalty of \$25,000 per violation. LCFS section 95494(b) provides that each day that a required report remains unsubmitted, incomplete, or inaccurate constitutes a separate violation. Health & Safety Code section 43030(a) provides that each day during any portion of which a violation occurs is a separate offense. The violations in the case of NOV **F10112018-BP-RPT** resulted in a penalty of \$1,000 for each day the quarterly reports remained inaccurate. The lower penalty rate reflects BP's genuine efforts to comply, BP's forthcoming cooperation with CARB's investigation, the volume of fuel involved, and the violation's overall impact on the program's goals.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

The penalty provisions applied in this case, including Health and Safety Code sections 38580(b), 43027(d) and 43030(a), are appropriate because BP or agents thereof submitted inaccurate quarterly fuel transactions reports in violation of LCFS section 95494(b).

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.

Health and Safety Code section 38580(b)(2) specifies that violations of any regulation under the Global Warming Solutions Act of 2006 shall be deemed to result in an emission of an air contaminant for purposes of the governing penalty statutes.

- (29) 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 costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per violation basis.
- (30) The penalty in this case was based in part on confidential business information provided by BP that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and BP that CARB does not retain in the ordinary course of business. The penalty also reflects CARB's assessment of the relative strength of the case against BP, the desire to avoid the uncertainty, burden and expense of litigation, to obtain swift compliance with the law and to remove any unfair advantage that BP may have secured from its actions.

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SO AGREED:

California Air Resources Board

Dated: 6/18/2020 By: /S/

(Signature)

Printed Name: Richard W. Corey

Title: Executive Officer

BP Products North America

Dated: 4/28/2020 By: /S/

(Signature)

Printed Name: Reavis, Sean

Title: Vice President