

## **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 AltAir Paramount, LLC (AltAir), with its principal location at 14700 Downey Avenue, Paramount, California 90723 (collectively, the "Parties," or individually, "Party").

### **LEGAL BACKGROUND**

- (1) Purpose. The Global Warming Solutions Act of 2006 mandates CARB to adopt regulations to reduce greenhouse gas emissions and to enforce those regulations. (Health & Saf. Code §§ 38560, 38562, and 38580.)
- (2) Regulation. CARB adopted the *Low Carbon Fuel Standard* (LCFS Regulation) to incentivize innovative fuels that will reduce greenhouse gas emissions. (Cal. Code Regs., tit.17, § 95480 et seq.)
- (3) Regulatory Provisions. Fuel reporting entities selling, supplying or offering for sale transportation fuel into the State of California must report this fuel to CARB as well its carbon intensity, which determines the number of credits or deficits the fuel will generate and ultimately demonstrate the fuel reporting entity met its annual compliance requirements. Fuel reporting entities must submit quarterly and annual reports that include the volume, fuel type, pathway code, and whether the corresponding credits or deficits were transferred with the fuel, and attest to the accuracy. (Cal. Code Regs., tit.17, §§ 95480-95503.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to thirty-five thousand dollars (\$35,000) for strict liability violations, twenty-five thousand dollars (\$25,000) for entering false information, failing to keep any document; forty thousand dollars (\$50,000) for negligent violations; and two-hundred fifty thousand dollars (\$250,000) for willful and intentional violations, respectively, for each day in which the violation occurs and \$1,000 per deficit. (Cal. Code Regs., tit. 17, § 95494; Health & Saf. Code §§ 38580, 42400 et seq., 42402 et seq., 43027, and 42410.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, AltAir was a limited liability company organized under the laws of the State of Delaware, registered as a Foreign Limited Liability Company in the State of California and conducted business in the State of California. (AltAir was acquired by World Energy, LLC in March 2018 after the date of the applicable 2017 reporting period referenced in NOV #F120318-ALTR-RPT.)

- (6) **Allegations.** This Settlement Agreement resolves Notice of Violation (NOV) F120218-ALTR-RPT, which was issued on June 4, 2019. CARB alleges that at all relevant times, AltAir was a fuel reporting entity as defined by the LCFS Regulation for the 2017 Reporting Period, and sold, supplied, offered for sale, and transported fuel into the State of California, but failed to report, submitted a report containing inaccuracies, misreported, or entered false quarterly and annual report information, which led to a failure to eliminate annual deficits. These actions represent violations of the LCFS Regulation as outlined in the Notice of Violation #F120218-ALTR-RPT (Cal. Code Regs., tit.17, § 95480 et seq.). CARB maintains that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against AltAir for each and every day of alleged violation.
- (7) **Acknowledgment.** AltAir 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, AltAir 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 AltAir for the alleged violations referred to above in the Legal Background and Case Background, and AltAir's agreement to complete all terms and conditions set forth below, CARB and AltAir agree as follows:

- (9) **Settlement Amount.** AltAir shall pay a civil penalty of sixty-six thousand and five hundred dollars (\$66,500.00 USD), and agrees to fund a Supplemental Environmental Project entitled Tree Fresno (SEP) in the amount of sixty-six thousand dollars (\$66,000.00 USD), consistent with CARB's SEP Policy, for a total settlement of one hundred and thirty-two thousand and five hundred dollars (\$132,500.00 USD). AltAir shall make all payments within 30 calendar days from the date CARB notifies AltAir of the full execution of the Settlement Agreement.
- (10) **Civil Penalty Payment Method.** AltAir 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. AltAir 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 AltAir in accordance with Paragraph 15 (Notices).

- (11) SEP Payment Method(s). AltAir shall fund the SEP by wire transfer, credit card, or check, payable to the SEP implementer/recipient, Mona Cummings, using instructions provided separately by CARB in a Payment Transmittal Form. AltAir is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to AltAir in accordance with Paragraph 15 (Notices).
- (12) Prohibition Against Financial Benefit. AltAir has agreed that by funding the SEP entitled Tree Fresno, AltAir will not receive any direct or indirect financial benefit, and that whenever AltAir publicizes or refers to the SEP or the results of the SEP, AltAir will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (13) Assignment of Rights. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, AltAir assigns any and all rights against the SEP implementer to CARB.
- (14) Documents. AltAir shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, mitigation, and/or SEP (if applicable), a copy of the Payment Transmittal Form(s) (if applicable), and the signed and dated Compliance Plan (if applicable) to the address or email in Paragraph 15 (Notices).
- (15) 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 / Fuels Enforcement Section  
9480 Telstar Avenue, Suite 4

AltAir Settlement Agreement  
Notice of Violation: F120218-ALTR-RPT

El Monte, California 91731  
[Settlement\\_Agreement@arb.ca.gov](mailto:Settlement_Agreement@arb.ca.gov)

As to AltAir:  
AltAir Paramount LLC  
14700 Downey Ave  
Paramount, CA 90723

As to AltAir's Legal Representation:  
Adam Deery  
225 Franklin Street, Suite 2330  
Boston, MA 02110

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.

- (16) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, AltAir shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (17) Repeat Violations. AltAir agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (18) 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 36 paragraphs.
- (19) Binding Effect. This Settlement Agreement binds AltAir, 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.
- (20) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (21) 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.

- (22) 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.
- (23) 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.
- (24) 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.
- (25) Not Tax Deductible. For purposes of this Settlement Agreement, AltAir 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.
- (26) 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.
- (27) 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.
- (28) 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.
- (29) Venue. The Superior Court of California, located in the County of Sacramento,

shall hear any dispute between the Parties arising from this Settlement Agreement.

- (30) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (31) Release. In consideration of the full completion of civil penalty and SEP payment(s), and all other undertakings above, CARB hereby releases AltAir and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (32) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

#### **PENALTY BASIS**

- (33) Per Unit Penalty. For violations of LCFS Cal. Code Regs., tit.17, §95494(c), which provides that each deficit that is not eliminated at the end of a compliance period or carried over as permitted by section 95485 constitutes a separate day of violation, penalties are not to exceed \$1000 per deficit. For violations of report submittals of the LCFS Regulation the per unit penalty in this case is a maximum of thirty-five thousand dollars (\$35,000) per day under Health and Safety Code sections 38580 and 43027. The penalty of \$132,500.00 represents a penalty of \$15,000 for each of the four quarters with incomplete or inaccurate quarterly reports and \$50 for each deficit carried over.
- (34) Emissions. The provisions cited above prohibit emissions above a specified level. Without additional information, it is not practicable to quantify the excess emissions. However, since CARB has alleged that AltAir did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- (35) 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.

- (36) Confidential Business Information. CARB based this penalty in part on confidential business information provided by AltAir 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: \_\_\_\_\_ Richard W. Corey \_\_\_\_\_

Title: \_\_\_\_\_ Executive Officer \_\_\_\_\_

Date: \_\_\_\_\_ 11/30/2020 \_\_\_\_\_

**AltAir Paramount LLC  
By Its Sole Manager, WMG Services LLC**

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

Name: \_\_\_\_\_ Gene J. Gebolys \_\_\_\_\_

Title: \_\_\_\_\_ President \_\_\_\_\_

Date: \_\_\_\_\_ 11/10/2020 \_\_\_\_\_