

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 Pacific Ethanol Stockton LLC (Alto), with an office located at 2450 Del Paso Road, Suite 250 Sacramento, California 95834 (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 (\$35,000.00 USD) for strict liability violations, twenty-five thousand dollars (\$25,000.00 USD) for entering false information, failing to keep any document; respectively, for each day in which the violation occurs and one thousand dollars (\$1,000 USD) 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, Pacific Ethanol Stockton LLC was organized under the laws of Delaware as a limited liability company and conducted business in the State of California.
- (6) Allegations. CARB alleges that at all relevant times, Alto was a fuel reporting entity as defined by the LCFS Regulation for the Reporting Period Quarter 1 2016 through Quarter 1 2019. CARB also alleges that at 3028 Navy Drive, Stockton, California 95206, Alto sold, supplied, offered for sale, ethanol into the State of California and submitted a report containing inaccuracies, misreported, or

entered false information, which did not conform to the requirements of the LCFS Regulation as outlined in the Notice of Violation F022420-PES-RPT. (Cal. Code Regs., tit.17, § 95480, et seq.) CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against Alto for each and every day.

- (7) Acknowledgment. Alto admits the jurisdictional allegations in paragraphs 1 through 6, but neither admits nor denies the facts alleged in the second sentence of paragraph 6, and further 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, Alto 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 Alto and any of Alto's affiliates for the alleged violations referred to above in the Legal Background and Case Background, and Alto's agreement to complete all terms and conditions set forth below, CARB and Alto agree as follows:

- (9) Settlement Amount. Alto shall pay a civil penalty of sixty thousand dollars (\$60,000.00 USD) to the "California Air Resources Board." Alto shall make all payments within 30 calendar days from the date CARB notifies Alto of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Alto shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to the California Air Resources Board, using instructions provided separately by CARB in a Payment Transmittal Form. Alto is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. At the time payment is made, Alto shall provide CARB with proof of payment, including a copy of the Payment Transmittal Form, to the email address provided in Paragraph 12 (Notices). 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 Alto in accordance with Paragraph 12 (Notices).
- (11) Documents. Alto shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty and a copy of the Payment Transmittal Form to the address or email listed in Paragraph 12 (Notices).

Alternatively, Alto may email the signed and dated Settlement Agreement directly to the CARB Enforcement Division Investigator handling the Settlement.

- (12) 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
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov (Proof of payment)

As to Pacific Ethanol Stockton LLC (Alto):

Pacific Ethanol Stockton LLC
2450 Del Paso Road, Suite 250
Sacramento, California 95834
rolander@altoingredients.com

As to Alto's Legal Representation:

Auste Graham
1300 S. 2nd St.
Pekin, Illinois 61554
agraham@altoingredients.com

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.

- (13) Repeat Violations. Alto agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (14) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties and their respective affiliates 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 32 paragraphs.
- (15) Binding Effect. This Settlement Agreement binds Alto, 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.

- (16) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (17) 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.
- (18) 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.
- (19) 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.
- (20) 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.
- (21) 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.
- (22) 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.
- (23) 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.
- (24) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.

- (25) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (26) Release. In consideration of full payment of the civil penalty and all other undertakings above, CARB hereby releases Alto 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.
- (27) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (28) Per Unit Penalty. The per unit penalty in this case is a maximum of twenty-five thousand dollars (\$25,000.00 USD) per day under Health and Safety Code sections 38580 and 43027, for violations of the LCFS Regulation. (Cal. Code Regs., tit. 17, § 95494.) The penalty of sixty thousand dollars (\$60,000 USD) over an unspecified number of days of violation is for 13 quarters. The per unit penalty in this case is approximately four thousand six hundred fifteen per quarter.
- (29) 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 Alto did not meet the regulatory requirements, all of the emissions from the alleged noncompliance were considered by CARB to be excess and illegal.
- (30) 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.

- (31) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Alto or confidential settlement communications.
- (32) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
 - (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Alto with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Alto with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Alto to CARB.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
 - (v) Any criminal liability.
 - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
 - (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Alto shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
 - (d) This Settlement Agreement does not limit or affect the rights of Alto or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Alto, except as otherwise provided by law. This

Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.

- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Alto is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Alto's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Alto's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Ellen M. Peter

Title: Chief Counsel

Date: October 23, 2023

Pacific Ethanol Stockton LLC (Alto)

Signature: /S/

Name: Auste M. Graham

Title: General Counsel, Vice President and Secretary

Date: October 3, 2023