

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement And Release (Agreement) is entered into between the State of California Air Resources Board (CARB), with its principal office at 1001 I Street, Sacramento, California 95814, and Tesoro Refining & Marketing Company LLC (Tesoro), with its principal place of business at 2350 E. 223rd Street, Carson, California 90810 (collectively, "the Parties").

I. RECITALS

1. The Global Warming Solutions Act of 2006 authorized CARB to adopt regulations requiring the reporting and verification of greenhouse gas emissions. (Cal. Health & Saf. Code § 38530.) Pursuant to that authority, CARB adopted the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR), California Code of Regulations (CCR), title 17, § 95100 *et seq.*
2. The MRR is crucial to the development of the greenhouse gas (GHG) inventory, and supports other regulatory programs, including the cap on GHG emissions established by CCR, title 17, § 95801 *et seq.*, known as the Cap-and-Trade Regulation. The MRR requires most reporting entities to submit, by April 10 of each year, an emissions data report containing emissions and product data that the reporting entity certifies is complete and accurate within stated standards. (CCR, tit. 17, § 95103.) The April 10 deadline precedes other regulatory events later in the year, such as verification under the MRR, and the distribution of allowances and surrender of compliance instruments under the Cap-and-Trade Regulation.
3. Where a report required under the MRR is late or does not meet the regulation's standards for accuracy, completeness, or third-party verification, the MRR provides that each day a report remains unsubmitted, incomplete or inaccurate constitutes a separate violation. (CCR, tit. 17, § 95107.)
4. California Health & Safety Code sections 38580 and 42402 provide that one who violates the MRR or related regulations is strictly liable for a penalty of up to \$10,000 for each violation.
5. Tesoro owns and operates a calciner facility in Wilmington, California, identified in the MRR program as CARB Facility ID # 100002 (Calciner). In addition to processing petroleum coke into calcined coke, the Calciner generates significant amounts of electricity, meaning that the Calciner is an "electricity generating facility" and "generation providing entity" as defined in the MRR section 95102. In 2008, the Calciner's prior owner reported emissions from the combustion of natural gas in an amount over the threshold for reporting. The Calciner's operator was thus required to report under the MRR for 2008 and future years. CARB contends that for the reporting periods 2013, 2014, and 2015, Tesoro failed to comply with the MRR because Tesoro submitted greenhouse gas emission reports relating to the Calciner that significantly misstated the magnitude of the

Calciner's carbon dioxide emissions. Tesoro discovered the error, informed CARB, and then submitted revised reports.

6. In reaching this settlement, CARB considered a variety of circumstances, notably including the fact that a prior facility owner caused the alleged violation, and that Tesoro identified and self-reported the violation.
7. In this matter, there were a number of mitigating factors, including that before Tesoro acquired the facility and associated monitoring and data handling system, a third party negligently or intentionally added an operation into a spreadsheet used in the reporting process, causing Tesoro to underreport carbon dioxide emissions. In addition, Tesoro submitted an updated GHG monitoring plan to CARB to demonstrate that reporting will be accurate in future reporting years.
8. In consideration of the foregoing, and of the promises and facts set forth below, 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 Agreement. In order to resolve the violations described herein, Tesoro has taken, or agrees to take, the actions detailed below within the Terms and Release and CARB accepts this Agreement in termination and full settlement of this matter.

II. TERMS AND RELEASE

9. In consideration of CARB not filing a legal action against Tesoro for the alleged violations referred to above, and in consideration of the terms set out below (and Tesoro's payment of the penalties), CARB and Tesoro agree as follows:
10. Tesoro agrees to cooperate fully with CARB's ongoing investigation, including making documents and employees available upon reasonable notice. Nothing in this paragraph is intended to require disclosure or production of documents protected as attorney-client communications, attorney work product relating to pending litigation, or any other privilege. Tesoro will advise its employees to be completely forthcoming with CARB and to testify truthfully in this investigation. CARB agrees that all document requests will be made through Tesoro's counsel and Tesoro may, at Tesoro's sole discretion, attend and participate in any employee or contractor interview. Tesoro will make reasonable efforts to promptly respond to CARB's reasonable requests made pursuant to this paragraph.
11. Tesoro agrees to pay a total sum of \$850,000, as set forth in this paragraph and paragraph 13. Within 30 business days following notice from CARB that the Agreement has been signed by all parties, Tesoro shall pay \$425,000 by wire transfer or check payable to the "Air Pollution Control Fund." The payment to the Air Pollution Control Fund should note "Tesoro GHG MRR Settlement" in the memo section. Tesoro shall send (1) a copy of the signed settlement agreement, (2) the check (if applicable), and (3) the payment transmittal form (Attachment A) to:

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

12. Tesoro agrees to fund a Supplemental Environmental Project (SEP), as described in Attachment B, to offset a portion of the settlement amount, consistent with CARB's SEP Policy. Tesoro agrees that by funding the SEP described in Attachment B, Tesoro will not receive a financial benefit.
13. Within 30 business days following notice from CARB that the Agreement has been signed by all parties, Tesoro shall pay \$425,000 by wire transfer or check payable to the SEP implementer, California Greenworks, Inc. For payment to the SEP implementer (California Greenworks, Inc.), Tesoro will send the payment to:

Haley Feng
Assistant Project Manager
3438 W. 43rd Street, Suite 8
Los Angeles, CA 90008

14. Tesoro will send a copy of all checks or proof of wire transfer(s) made under paragraphs 11 and 13 above to:

Satapana Buthken
Air Resources Board
P.O. Box 2815
Sacramento, CA 95812-2815

III. GENERAL PROVISIONS

15. The Parties further agree that the payments described in paragraphs 11 and 13 are punitive in nature, rather than compensatory. These payments, arising from the facts described in recital paragraphs 1- 8, are non-dischargeable under 11 United States Code §523(a)(7).
16. This Agreement constitutes the entire agreement and understanding between CARB and Tesoro concerning the subject matter hereof, and supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between CARB and Tesoro concerning the subject matter hereof.
17. This Agreement shall apply to and be binding upon Tesoro, and any receivers, trustees, successors and assignees, and subsidiaries. This Agreement shall apply to and be binding upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
18. The effective date of this Agreement shall be the date of the last signature. The Parties may execute and deliver this Agreement by transmitting an authorized

signature by fax or .pdf document. Copies of this Agreement signed and delivered by means of faxed signatures or signatures in a .pdf document shall have the same effect as copies executed and delivered with original signatures.

19. 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.
20. The headings in this Agreement are not binding, are for reference only, and do not limit, expand, or otherwise affect the contents of this Agreement.
21. 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, the remainder of this Agreement remains in full force and effect.

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.

IV. PENALTY DETERMINATION

22. California Health & Safety Code section 39619.7 requires CARB to explain the manner in which the penalty was determined, the law on which it is based, and whether that law prohibits emissions at a specified level. CARB considered all relevant factors, including those listed at California Health & Safety Code section 42403, explained the manner in which the penalty amount was calculated, and identified the provision of law under which the penalty is being assessed. This information is provided throughout this Agreement and is summarized below.

The manner in which the penalty was determined, including any per-unit penalty. Penalties must be set at levels sufficient to deter violations. The penalty in this matter was determined in consideration of all relevant circumstances, including the unique circumstances of this case, and the eight factors specified in California Health & Safety Code section 42403. CARB considered the reporting entity's size, the extent to which the monitoring and reporting deviated from MRR requirements, the cause of any errors and omissions, and the magnitude of any errors. CARB considered those circumstances together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, penalties sought in other cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger.

In this matter, the penalty equates to \$752 for each day that the report remained inaccurate. The penalty is significantly discounted because Tesoro identified the reporting error, voluntarily disclosed that error to CARB, and thereafter made diligent efforts to comply and to cooperate with CARB's investigation.

The legal provisions under which the penalty was assessed and why those provisions are appropriate. The penalty is based on California Health & Safety

Code section 42402 and CCR, title 17, section 95107, the provisions intended to govern MRR violations.

Whether the governing provisions prohibit emissions at a specified level. The MRR does not prohibit emissions above a stated level, but California Health & 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 for purposes of the governing penalty statutes.

23. The penalty was based on confidential settlement communications between CARB and Tesoro. The penalty is the product of an arm's length negotiation between CARB and Tesoro and reflects CARB's assessment of the relative strength of its case against Tesoro, 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 Tesoro may have secured from its actions.
24. In consideration of the payments and undertaking in paragraphs 10, 11, 12, and 13 above, CARB hereby releases Tesoro and its receivers, trustees, successors, assignees, and subsidiary and parent corporations from any claims that CARB and any successor agency may have based on the alleged violations described in this Agreement.
25. Each of the undersigned represents and warrants that they have the full authority to enter into this Agreement.

V. ENFORCEMENT

26. CARB expressly reserves the right to bring an enforcement action based on violations of law not covered in this Agreement and to seek whatever fines, penalties, or remedies are provided by law, including Injunctive relief.
27. In the event CARB believes that Tesoro has defaulted under this Agreement, the Parties agree to the following:
 - a. The Superior Court of California, County of Sacramento (the "Court") has jurisdiction over the Parties and over the subject matter of this Agreement;
 - b. Venue is proper in Sacramento; and

//

//

//

//

CARB AND TESORO REFINING & MARKETING COMPANY LLC

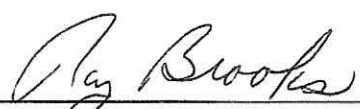
- c. CARB may simultaneously file a complaint, proposed stipulated judgment containing the terms of paragraphs 9 through 14, above, and a noticed motion seeking entry of a stipulated judgment. Within the time allowed by California law, including any applicable rules of court, Tesoro may file an opposition limited to the issues of whether Tesoro has defaulted and any issue raised in CARB's filing.

California Air Resources Board

By: 
Richard W. Corey
Executive Officer

Date: 5/17/2019

Tesoro Refining & Marketing Company
LLC

By: 
Ray Brooks
Vice President, TRMC

Date: 4-23-19

