

This Settlement Agreement (Agreement) is entered into between the State of California Air Resources Board (ARB), 1001 I Street, Sacramento, California 95814, and Luminus Energy Partners QP, L.P. (Luminus), 1700 Broadway, 38th Floor, New York, NY 10019.

## RECITALS

1. The Global Warming Solutions Act of 2006 authorized ARB to adopt regulations to reduce greenhouse gas emissions, including market-based approaches. (Health & Saf. Code §§38560, 38570.) Pursuant to that authority, ARB adopted the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (Regulation), California Code of Regulations (CCR), title 17, §95801 et seq.
2. The Regulation is crucial to reducing greenhouse gas (GHG) emissions, and includes several provisions intended to ensure a fair and functional market.
3. California Health & Safety Code sections 38580 and 42402 et seq. provide that one who violates the Regulation is liable for a penalty of up to \$75,000 for intentional violations, \$25,000 for each violation based on negligence or up to \$10,000 based on strict liability.
4. ARB contends that in connection with the August, 2013 allowance auction, Luminus discussed bidding information with a third party consultant who had not been disclosed in advance to the Air Resources Board. Such disclosures are forbidden by sections 95912 and 95914 of the Regulation.
5. In reaching this settlement, ARB considered a variety of circumstances, including the nature of the violator's business, the nature, magnitude, and duration of the violation, any harm to the regulatory program, efforts the violator took to prevent the violation and to correct it, and the financial burden to the violator.
6. In this matter, there were a number of mitigating factors, including that this is the first time ARB has noted the company as being in violation, there is no evidence of any intent to manipulate the allowance auction market, there is no evidence that Luminus had any negative impact on the allowance auction market, Luminus sought guidance on the application of sections 95912 and 95914 to its investment advisor and the third party consultant prior to participating in an allowance auction, Luminus submitted a form to ARB disclosing Luminus Management, LLC as its investment advisor prior to participation in an allowance auction, and a written confidentiality agreement with the third party consultant to whom the information was disclosed limited the scope of the violation. Further, once requested by ARB, Luminus promptly submitted a form disclosing the third party consultant, as well as other information requested by ARB, and Luminus cooperated fully with ARB's investigation.
7. In order to resolve these alleged violations and without admitting or denying any wrongdoing, Luminus has taken, or agreed to take, the actions enumerated below. Further, ARB accepts this Agreement in termination and settlement of this matter.

8. 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 violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and Luminus agree as follows.

### TERMS

9. Within 15 business days following execution of this agreement, Luminus shall deliver a check or money order in the sum of \$40,000.00 made payable to the "Air Pollution Control Fund." The full settlement amount shall be borne by Luminus Management, LLC, as the investment advisor to Luminus Energy Partners QP, L.P.

The check should note "Luminus 2013 Cap-and-Trade settlement" in the memo section. Please submit the signed settlement agreement and check to:

Mr. Will Brieger  
Air Resources Board, Office of Legal Affairs  
P.O. Box 2815  
Sacramento, CA 95812

10. It is further agreed that the penalties described in the prior paragraph are punitive in nature, rather than compensatory, and payable to a governmental unit. Therefore, it is agreed that these penalties imposed on Luminus by ARB arising from the facts described in recital paragraphs 1 – 8 are non-dischargeable under 11 United States Code § 523 (a)(7).

11. Luminus shall not violate the Regulation, CCR, title 17, section 95801 *et seq.*

12. This Agreement shall apply to and be binding upon Luminus, and its officers, directors, 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.

13. This Agreement constitutes the entire agreement and understanding between ARB and Luminus concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Luminus concerning the subject matter hereof.

14. 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.

15. 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.

16. 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.

17. 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.

#### SB 1402 STATEMENT

18. Health & Safety Code section 39619.7 requires ARB 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. Luminus acknowledges that ARB has complied with section 39619.7 in investigating, prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health & Safety Code section 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed, which provision does not prohibit the emission of pollutants at a specified level. That information, some of which is also elsewhere in this settlement agreement, is summarized here.

**The manner in which the penalty was determined, including any per unit penalty.** Penalties must be set at levels sufficient to deter violations. The penalties in this matter were determined based on all relevant circumstances, including the unique circumstances of this case, giving consideration to the eight factors specified in Health & Safety Code section 42403. Consideration was given to the extent to which the violation deviated from the Regulation's requirements, the cause of the violation, and whether the violator gained in any way from the violation. Those circumstances were considered 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. Here the penalty equates to \$40,000 for sharing information with one undisclosed third party consultant who was subject to a written confidentiality agreement. Penalties in future cases might be smaller or larger.

19. In this matter the penalty was discounted based on the fact that the violation was a first time violation for this company, there is no evidence of any intent to manipulate the allowance auction market, there is no evidence that Luminus had any negative impact on the allowance auction market, Luminus sought guidance on the application of sections 95912 and 95914 to its investment advisor and the third party consultant prior to participating in an allowance auction, Luminus submitted a form to ARB disclosing Luminus Management, LLC as its investment advisor prior to participation in an allowance auction, and a written confidentiality agreement with the third party consultant to whom the information was disclosed limited the scope of the violation. Further, once requested by ARB, Luminus promptly submitted a form disclosing the third party consultant, as well as other information requested by ARB, and Luminus cooperated fully with ARB's investigation.

**The legal provisions under which the penalty was assessed and why those provisions are appropriate:** The penalty is based on Health & Safety Code sections 42402 *et seq.* and CCR, title 17, section 96013, the provisions intended to govern violations of the Regulation.

**Whether the governing provisions prohibit emissions at a specified level:** The provisions above do not prohibit emissions above a stated level, but 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.

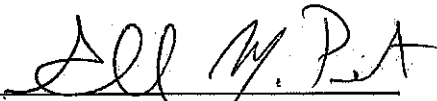
20. The penalty was based on confidential settlement communications between ARB and Luminus. The penalty is the product of an arms length negotiation between ARB and Luminus and reflects ARB's assessment of the relative strength of its case against Luminus, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Luminus may have secured from its actions.

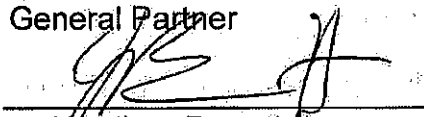
21. In consideration of the penalty payment and undertaking in paragraph 11, above, ARB hereby releases Luminus and its officers, directors, receivers, trustees, employees, successors and assignees, affiliates, subsidiary and parent corporations from any claims the ARB may have based on the circumstances described in paragraph 4, above.

22. The undersigned represent that they have the authority to enter into this Agreement.

**California Air Resources Board**

**Luminus Energy Partners QP, L.P.**

By:   
Ellen M. Peter  
Chief Counsel

By: Polaris Energy GP, LLC  
Its: General Partner  
By:   
Jonathan Barrett  
Vice President

Date: 10/31/2013

Date: October 25, 2013



# Air Resources Board



**Matthew Rodriguez**  
Secretary for  
Environmental Protection

**Mary D. Nichols, Chairman**  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731 • [www.arb.ca.gov](http://www.arb.ca.gov)

**Edmund G. Brown Jr.**  
Governor

TO: Ellen M. Peter  
Chief Counsel

FROM: Will Brieger  
Senior Staff Attorney *Will*

DATE: October 25, 2013

SUBJECT: Request for Settlement Signature – Luminus (Cap & Trade).

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Attached please find a settlement agreement for Luminus Energy Partners QP, LP (Luminus). If you approve of the settlement agreement, please sign and date it where indicated on page four.

The company will pay a \$40,000 penalty for sharing bidding information with an advisor that had not been disclosed to ARB in advance. An investigation by ARB indicated that Luminus Energy Partners violated a portion of California's Cap-and-Trade Regulation (17 Cal. Code of Regulations §95801 et seq.) — specifically, provisions governing the use of bid advisors at section 95914. In connection with the August 2013 allowance auction, Luminus discussed bidding information with a third-party advisor who had not been disclosed in advance to the Air Resources Board. Auction advisors who have been disclosed are the only third parties with whom auction participants may share information regarding auction participation, including whether an entity will be participating in an auction and information regarding bidding. The violation was mitigated by the fact that the company had disclosed a related advisor, the company cooperated in ARB's investigation, and the limited disclosure took place in a confidential context because of a confidentiality clause in the advisor's contract.

The settlement agreement was signed by Luminus today. It is being provided to you for your review and approval. If you have any questions, please contact me at 324-0703 (626) 350-6577.

Attachment: Signed Settlement Agreement

Cc: Rajinder Sahota

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.*

California Environmental Protection Agency