

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 POET Ethanol Products LLC ("POET"), with its principal location at 3939 North Webb Road, Wichita, Kansas 67226 (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 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, POET was organized under the laws of South Dakota as a limited liability company and conducted business in the State of California.
- (6) Allegations. CARB alleges that at all relevant times, POET was a fuel reporting entity as defined by the LCFS Regulation for the Reporting Period of the second quarter of 2023, and sold, supplied, offered for sale, transportation fuel ethanol into the State of California, and subsequently did not conform to the reporting requirements of the LCFS Regulation. (Cal. Code Regs., tit. 17, § 95480 et seq.) CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against POET.

- (7) Acknowledgment. POET admits to the facts in paragraphs 1 through 5, and admits that CARB has made the allegations in paragraph 6, but denies any liability resulting from the 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, POET 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 POET for the alleged violations referred to above in the Legal Background and Case Background, POET's agreement to complete all terms and conditions set forth below, and CARB's agreement not to maintain any other administrative consequences with respect to this matter, CARB and POET agree as follows:

- (9) Settlement Amount. POET shall pay a civil penalty of fifty thousand dollars (\$50,000.00 USD). POET shall make all payments within thirty (30) calendar days from the Notification Date.
- (10) Notification Date. The date upon which CARB notifies POET according to Paragraph 13 (Notices), that the Settlement Agreement is fully executed or when CARB sends the fully executed Settlement Agreement to POET.
- (11) Civil Penalty Payment Method. POET 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. POET 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 POET in accordance with Paragraph 13 (Notices).
- (12) Documents. POET shall promptly email or mail the signed and dated Settlement Agreement, to the address or email in Paragraph 13 (Notices).
- (13) 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

As to POET:

Josh Wilson, Senior Regulatory Counsel
900 7th Street NW, Suite 820
Washington, DC 20001
Josh.Wilson@POET.com

As to POET's Legal Representation:

Sarah Grey
Arnold & Porter Kaye Scholer LLP
1144 Fifteenth Street, Suite 3100
Denver, Colorado 80202-2569
Sarah.Grey@arnoldporter.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.

- (14) 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 6 pages and 31 numbered paragraphs.
- (15) Binding Effect. This Settlement Agreement binds POET, 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 POET 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 Paragraph 6 (Allegations) above. In consideration of CARB's acceptance of this settlement as the final remedy for the violation described in Paragraph 6 (Allegations) above, POET releases CARB from any claims POET may have related to any LCFS crediting associated with POET's reporting for the second quarter 2023 quarterly reporting period identified in Paragraph 6 (Allegations).
- (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 would be assessed under Health and Safety Code sections 38580 and 43027, for violations of the LCFS Regulation. (Cal. Code Regs., tit. 17, § 95494.) This case was not resolved on a per unit basis.
- (29) Emissions. The provisions cited in Paragraph 6 (Allegations) above do not prohibit emissions above a specified level.
- (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 POET or confidential settlement communications.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Heather L. Quiros

Title: Chief, Enforcement Division

Date: August 1, 2024

POET Ethanol Products LLC

Signature: /S/

Name: Bob Whiteman

Title: Chief Financial Officer

Date: July 31, 2024