

## 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 Kern Oil & Refining Co. (Kern); with its principal location at 7724 E. Panama Lane, Bakersfield, California 93307 (collectively, the "Parties," or individually, "Party").

This agreement follows the Terms of Agreement allowing supply of Non-RVP controlled gasoline after the regulatory required transition date of April 1, 2020 in the (San Joaquin Valley Air Basin which CARB and Kern agreed on April 3, 2020.

### LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates CARB to reduce emissions from vehicular and other mobile sources and to specifically to achieve maximum feasible reductions through the adoption and implementation of motor vehicle fuel specifications. (Health & Saf. Code §§ 39003, 43013, 43018.)
- (2) Regulation. CARB adopted the *California Reformulated Gasoline Regulation* (CaRFG Regulation) to establish standards and compliance requirements for motor vehicle fuels applicable to producers and importers of motor vehicle fuel in California. (Cal. Code Regs., tit.13, §§ 2250-2273.5.)
- (3) Regulatory Provisions. Any person who sells, supplies, offers for sale, offers for supply, gasoline for motor vehicles in the State of California, including at retail and dispensing into a motor vehicle tank must ensure the gasoline does not exceed the applicable cap limit for sulfur, benzene, aromatic hydrocarbons, olefins, T50 or T90. (Cal. Code Regs., tit. 13, § 2262.) This includes reformulated gasoline blendstock for oxygenate blending (CARBOB). (Cal. Code Regs., tit.13, § 2261.)
- (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, fifty thousand dollars (\$50,000) for negligent violations, and two hundred and fifty thousand dollars (\$250,000) for willful violations respectively, for each day in which the violation occurs. Entering false information, or failing to keep any document required to be kept under the CaRFG Regulation may result in a penalty up to twenty-five thousand dollars (\$25,000). Each day during any portion of which a violation occurs is a separate violation. (Cal. Code Regs., tit.13, § 2450 et seq.; Health & Saf. Code § 43026, 43027, 43030.)

## CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Kern was organized under the laws of California as Kern Oil & Refining Co. and conducted business in the State of California.
- (6) Allegations. On March 27, 2020, Kern voluntarily reached out to CARB concerning the regulatory-required transition date of April 1, 2020, for switching from Non-RVP controlled gasoline to RVP-controlled gasoline. Kern explained that the economic shutdown caused by the response to the COVID-19 virus had impacted Kern's strategic transition plan. In an effort to cooperate and mitigate harm from Kern's inability to meet the transition deadline, Kern entered into the Terms of Agreement with CARB on April 2, 2020 (superseded by this Agreement). Under the Terms of Agreement, Kern produced 105,553 BBL of winter gasoline for 18 days from April 3 through April 20, collected and provided CARB 11 out of 18 required retain samples, and reported daily information to CARB. In return for Kern's cooperation and voluntary disclosure, CARB agreed to consider reducing Kern's penalties for the alleged violation. CARB alleges that Kern subsequently did produce, sell, offer for sale, supply, offer for supply, or transport 105,553 BBL of winter gasoline for 18 days from April 3 through April 20 in violation of the CaRFG Regulation.
- (7) CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against Kern for each and every retail sale involved in the violations and each day.
- (8) Acknowledgment. Kern admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (9) 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, Kern 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 Kern for the alleged violations referred to above in the Legal Background and Case Background, and Kern's agreement to complete all terms and conditions set forth below, CARB and Kern agree as follows:

Kern shall pay a \$2,000 per day strict liability violation for each day of alleged violation. The penalty obtained in this case reflects a 94% reduction and the consideration of a number of factors including the following: Kern voluntarily disclosed the alleged violation; Kern did not have a similar RVP violation three years prior to this alleged violation; unforeseen circumstances impacting fuel demand caused the alleged violation; and Kern cooperated diligently and fully with the investigation and the daily reporting of supplied fuel to CARB.

- (10) Settlement Amount. Kern shall pay a civil penalty of thirty six thousand dollars (\$36,000.00 USD). Kern shall make all payments no later than January 1, 2021.
- (11) Civil Penalty Payment Method. Kern 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. Kern 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 Kern in accordance with Paragraph 14 (Notices).
- (12) Documents. Kern 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 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, CA 95812-2815  
[Settlement\\_Agreement@arb.ca.gov](mailto:Settlement_Agreement@arb.ca.gov)

As to KERN:

Melinda Hicks  
Kern Oil & Refining Co.  
7724 E. Panama Lane  
Bakersfield, CA 93307  
[mhicks@kernoil.com](mailto:mhicks@kernoil.com)

As to Kern's Legal Representation:

Craig Moyer  
Manatt, Phelps & Phillips, LLP  
2049 Century Park East Suite 1700  
Los Angeles, CA 90067  
[cmoyer@manatt.com](mailto:cmoyer@manatt.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) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Kern shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (15) Repeat Violations. Kern agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (16) 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 8 pages and 34 paragraphs.

- (17) Binding Effect. This Settlement Agreement binds Kern, 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.
- (18) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (19) 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.
- (20) 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.
- (21) 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.
- (22) 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.
- (23) Not Tax Deductible. For purposes of this Settlement Agreement, Kern 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.
- (24) 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.
- (25) 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.

- (26) 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.
- (27) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (28) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (29) Release. In consideration of the full completion of civil penalty, and all other undertakings above, CARB hereby releases Kern 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.
- (30) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

#### **PENALTY BASIS**

- (31) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of thirty-five thousand dollars (\$35,000) per day per violation under Health and Safety Code section 43027, for violations of the CaRFG Regulation. (Cal. Code Regs., tit.13, § 2450, et seq.) The penalty of \$36,000 over 18 days of violation is for 105,553 gallons of noncompliant fuel. The per unit penalty in this case is approximately \$2,000 per noncompliant day.

- (32) Emissions. The provisions cited above do not prohibit emissions above a specified level. Without information on engine usage and emission rates, etc., it is not practicable to quantify the excess emissions. However, since CARB has alleged that the fuel did not meet the regulatory requirements, CARB alleges that any emissions attributable to the fuel were illegal.
- (33) 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.
- (34) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Kern 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: \_\_\_\_\_ Ellen M. Peter

Title: \_\_\_\_\_ Chief Counsel

Date: \_\_\_\_\_ 12/29/2020

Kern Oil & Refining Co. Settlement Agreement  
Violation # F040120-KRNR-RVP

---

**Kern Oil & Refining Co.**

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

Name: \_\_\_\_\_ David McCoy \_\_\_\_\_

Title: \_\_\_\_\_ Senior Vice President Operations \_\_\_\_\_

Date: \_\_\_\_\_ 12/15/2020 \_\_\_\_\_