

## **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 Phillips 66 Company (Phillips 66), with its principal location at 1660 W. Anaheim Street, Wilmington, California 90744, (collectively, the "Parties," or individually, "Party").

### **LEGAL BACKGROUND**

- (1) Purpose. The California Health and Safety Code mandates CARB to reduce emissions from vehicular and other mobile sources and to specifically 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 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 (\$25,000). (Cal. Code Regs., tit.13, § 2450 et seq.; Health & Saf. Code § 43026, 43027, 43030.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, Phillips 66 was organized under the laws of Delaware and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) F031919-PSXR-ARO, which was issued on May 29, 2020. CARB alleges Phillips 66 violated the CaRFG Regulation by selling, offering for sale, supplying, offering for supply, or transporting CARBOB exceeding the Predictive Model provided by the

company, as outlined in Notice of Violation F031919-PSXR-ARO for 8 days. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against Phillips 66 for each and every megawatt hour involved in the violations and each day.

- (7) Acknowledgment. Phillips 66 admits to the facts in paragraphs 1 through 6, but 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, Phillips 66 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 Phillips 66 for the alleged violations referred to above in the Legal Background and Case Background, and Phillips 66's agreement to complete all terms and conditions set forth below, CARB and Phillips 66 agree as follows:

- (9) Settlement Amount. Phillips 66 shall pay a civil penalty of one hundred thousand dollars (\$100,000.00 USD) ("Civil Penalty"), and agrees to fund a Supplemental Environmental Project (SEP) entitled "Fresno Trees" in the amount of one hundred thousand dollars (\$100,000.00 USD) ("SEP Payment Amount"), consistent with CARB's SEP Policy, for a total settlement of two hundred thousand dollars (\$200,000.00 USD). Phillips 66 shall make all payments within 30 calendar days from the date CARB notifies Phillips 66 of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Phillips 66 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. Phillips 66 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 Phillips 66 in accordance with Paragraph 15 (Notices).
- (11) SEP Payment Method(s). Phillips 66 shall fund the SEP by wire transfer, credit card, or check, payable to the SEP Recipient/Administrator, Tree Fresno,

using instructions provided separately by CARB in a Payment Transmittal Form. Phillips 66 is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to Phillips 66 in accordance with Paragraph 15 (Notices).

- (12) Prohibition Against Financial Benefit. Phillips 66 has agreed that by funding the SEP entitled "Fresno Trees," Phillips 66 will not receive any direct or indirect financial benefit, and that whenever Phillips 66 publicizes or refers to the SEP or the results of the SEP, Phillips 66 will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (13) Assignment of Rights. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP Recipient, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, Phillips 66 assigns any and all rights against the SEP Recipient to CARB.
- (14) Documents. Phillips 66 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 15 (Notices).
- (15) 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 Phillips 66:  
Angel Meza  
1660 W. Anaheim Street  
Wilmington, California 90744  
Angel.J.Meza@p66.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.

- (16) Repeat Violations. Phillips 66 agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (17) 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 7 pages and 35 paragraphs.
- (18) Binding Effect. This Settlement Agreement binds Phillips 66, and any principals, officers, receivers, trustees, successors and assignees and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (19) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (20) 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.
- (21) 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.
- (22) 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.
- (23) 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.

- (24) Not Tax Deductible. For purposes of this Settlement Agreement, Phillips 66 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.
- (25) 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.
- (26) 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.
- (27) 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.
- (28) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (29) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (30) Release. In consideration of the full completion of the Civil Penalty and SEP Payment Amount, and all other undertakings above, CARB hereby releases Phillips 66 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.
- (31) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

## PENALTY BASIS

- (32) Per Unit Penalty. The per unit 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.) CARB alleges that the noncompliant fuel was supplied over 8 days, for a total penalty of \$200,000. The per unit penalty in this case is \$25,000 per noncompliant day.
- (33) 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 CARBOB did not meet the regulatory requirements, any of the emissions from it were illegal.
- (34) 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.
- (35) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Phillips 66 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: Richard W. Corey

Title: Executive Officer

Date: 7/7/2021

**Phillips 66 Company**

Signature: /S/

Name: Michael J. Bodziak

Title: Manager, Business Optimization

Date: 6/15/2021