

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 Diamond Green Diesel LLC ("Diamond Green Diesel"), with its principal location at 14891 E Airline Highway, Norco, Louisiana 70079 (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 up to thirty-five thousand dollars (\$35,000.00 USD) for strict liability violations, twenty-five thousand dollars (\$25,000.00 USD) for entering false information, failing to keep any document; respectively, for each day in which the violation occurs and one thousand dollars (\$1,000.00 USD) 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, Diamond Green Diesel was organized under the laws of Louisiana as a limited liability company and held a registered fuel pathway pursuant to the LCFS Regulation under which it sold fuel to customers that supplied that fuel into the State of California.
- (6) Allegations. This Settlement Agreement resolves Notice of Violation ("NOV") F101618-DGDR-RPT, which was issued on February 22, 2021. CARB alleges that at all relevant times, Diamond Green Diesel was the holder of a registered fuel pathway and sold products, pursuant to this pathway, to customers that were fuel reporting entities as defined by the LCFS Regulation for the Reporting

Period Quarter-1 2016 through Quarter-3 2019. CARB alleges that Diamond Green Diesel and its customers sold, supplied, and/or offered for sale, renewable diesel into the State of California and submitted one or more reports containing inaccuracies, or misreported information, which did not conform to the requirements of the LCFS Regulation as outlined in the Notice of Violation F101618-DGDR-RPT. (Cal. Code Regs., tit.17, § 95480 et seq.) CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against Diamond Green Diesel and its customers for each and every day.

- (7) Acknowledgment. Diamond Green Diesel admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) Consideration. Through this agreement, Diamond Green Diesel intends to resolve any liability that Diamond Green Diesel and its customers might otherwise have had as it relates to the allegations described in paragraph 6. 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, Diamond Green Diesel 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 Diamond Green Diesel for the alleged violations referred to above in the Legal Background and Case Background, and Diamond Green Diesel's agreement to complete all terms and conditions set forth below, CARB and Diamond Green Diesel agree as follows:

- (9) Settlement Amount. Diamond Green Diesel shall pay a civil penalty of one hundred sixty-eight thousand dollars (\$168,000.00 USD). Diamond Green Diesel shall make the payment within 30 calendar days from the date CARB notifies Diamond Green Diesel of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Diamond Green Diesel 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. Diamond Green Diesel 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 Diamond Green Diesel in accordance with Paragraph 12 (Notices).

- (11) Documents. Diamond Green Diesel shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty accompanied by a copy of the Payment Transmittal Form to the address or email in Paragraph 12 (Notices).
- (12) 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 Diamond Green Diesel:

Diamond Green Diesel LLC
14891 E Airline Highway
Norco, Louisiana 70079

Attn: Neil Fox
Title: Executive Director of Trading
Neil.Fox@valero.com

As to Diamond Green Diesel's Legal Representation:

Julie A. Cress
Baker Botts L.L.P.
101 California Street, Suite 3600
San Francisco, California 94111
Julie.cress@bakerbotts.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.

- (13) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Diamond Green Diesel shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.

- (14) Repeat Violations. Diamond Green Diesel agrees to comply with all regulatory requirements and acknowledges that repeat violations committed by Diamond Green Diesel could result in increased penalties in the future. Diamond Green Diesel's assumption of liability for its customers, as it relates to the allegations described herein, shall not factor against Diamond Green Diesel in determining any increased penalties associated with repeat violations.
- (15) 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 33 paragraphs.
- (16) Binding Effect. This Settlement Agreement binds Diamond Green Diesel, 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.
- (17) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (18) 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.
- (19) 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.
- (20) 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.
- (21) 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.

- (22) 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.
- (23) 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.
- (24) 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.
- (25) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (26) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (27) Release. In consideration of full payment of the civil penalty, and all other undertakings above, CARB hereby releases Diamond Green Diesel and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, and its customers as described herein, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (28) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (29) Per Unit Penalty. The per unit penalty in this case is a maximum of twenty-five thousand dollars (\$25,000.00 USD) per day under Health and Safety Code sections 38580 and 43027, for violations of the LCFS Regulation. (Cal. Code Regs., tit.17, § 95494.) The penalty of one hundred sixty-eight thousand dollars

(\$168,000.00 USD) represents a penalty of four thousand dollars (\$4,000.00 USD) for each of the thirty-seven (37) incomplete or inaccurate quarterly reports, and five thousand dollars (\$5,000.00 USD) for each of the four (4) incomplete or inaccurate pathway application submittals. This penalty amount reflects Diamond Green Diesel's cooperation with CARB in securing a quick resolution of the issues described herein as well as taking into account other relevant facts and circumstances.

- (30) Emissions. The provisions cited above prohibit emissions above a specified level. Without additional information, it is not practicable to quantify the excess emissions. Under Health and Safety Code section 38580(b)(2), applicable here, violations of the LCFS Regulation shall be deemed to result in an emission of an air contaminant for purposes of the governing penalty statutes.
- (31) 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.
- (32) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Diamond Green Diesel or confidential settlement communications.
- (33) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
 - (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Diamond Green Diesel with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement

Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Diamond Green Diesel with respect to:

- (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts relating to the subject NOV that were not disclosed by Diamond Green Diesel to CARB.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
 - (v) Any criminal liability.
 - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Diamond Green Diesel shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does resolve allegations against Diamond Green Diesel's customers, but does not otherwise limit or affect the rights of Diamond Green Diesel or of CARB against any third parties not covered by this Settlement Agreement. Nor does it limit the rights of third parties not covered by this Settlement Agreement against Diamond Green Diesel, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.

- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Diamond Green Diesel is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Diamond Green Diesel's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Diamond Green Diesel's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Richard W. Corey

Title: Executive Officer

Date: June 29, 2022

Diamond Green Diesel LLC

Signature: /S/

Name: Eric Honeyman

Title: Vice President

Date: June 20, 2022