

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 Kay Lynn Schaffer (Schaffer) and Weld-IT Industries, Inc., with its principal location at 4477 Sheila Street, Commerce, California 90023, including any other affiliates, successors, or assigns to Weld-IT Industries, Inc., including Sam Shaffer, Inc., ("Schaffer and Weld-IT, Inc.") (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates CARB to adopt test procedures and certification rules for compliance of vapor recovery systems of cargo tanks on tank vehicles used to transport gasoline with vapor emission standards which are reasonable and necessary to achieve or maintain any applicable ambient air quality standard. (Health & Saf. Code § 41962; 41954.)
- (2) Regulation. CARB adopted the *Vapor Recovery Systems in Gasoline Marketing Operations, Certification of Vapor Recovery Systems for Cargo Tanks Regulation* (Cargo Tanks Regulation) to reduce emissions of Toxic Air Contaminants (TACs) that cause adverse health effects and Volatile Organic Compounds (VOC) from cargo tank vehicles used to transport gasoline. (Health & Saf. Code § 41962; Cal. Code Regs., tit.17, § 94014.)
- (3) Regulatory Provisions. No person shall operate or allow operation of a cargo tank vehicle transporting gasoline without a vapor recovery system that has been certified using proper certification and test procedures, which prohibits purging or venting gasoline vapor from a cargo tank directly into the atmosphere. (Cal. Code Regs., tit. 17, § 94014.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to; seventy-five thousand dollars (\$75,000) for willful and intentional violations, respectively, for each day in which the violation occurs. (Cal. Code Regs., tit.17, 94014; Health & Saf. Code §§ 41962, 42402.3, and 42410.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Weld-IT Industries, Inc. was organized under the laws of the State of California as a corporation, doing business as, "Weld-IT Company" and conducted business in the State of California, and owned by Schaffer. Schaffer and Weld-IT Industries, Inc. assert Weld-IT Industries, Inc. has not conducted any business operations in California since 2019.
- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) CT-

0220-01, which was issued on September 25, 2020. CARB alleges that Schaffer and Weld-IT Industries, Inc. violated the Cargo Tanks Regulation by purging or venting gasoline vapors from four cargo tanks directly into the atmosphere at 4477 Sheila Street, Commerce, California 90023, in violation of the requirements of the Cargo Tanks Regulation as outlined in Notice of Violation CT-0220-01. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against Schaffer and Weld-IT Industries, Inc. for each and every piece of equipment involved in the violations and each day.

- (7) Acknowledgment. Schaffer and Weld-IT Industries, Inc. admit 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, Schaffer and Weld-IT Industries, Inc. 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 Schaffer and Weld-IT Industries, Inc. for the alleged violations referred to above in the Legal Background and Case Background, and Schaffer and Weld-IT Industries, Inc. agreement to complete all terms and conditions set forth below, CARB and Schaffer and Weld-IT Industries, Inc. agree as follows:

- (9) Settlement Amount. Schaffer and Weld-IT Industries, Inc. is subject to a civil penalty of two hundred and two thousand, five hundred dollars (\$202,500 USD). As a result of Schaffer and Weld-IT Industries, Inc.'s submission of evidence of financial hardship and cooperation in the investigation, CARB agrees to suspend a total of one hundred and ninety-seven thousand, five hundred dollars (\$197,500 USD) of this civil penalty for a period of three years if Schaffer and Weld-IT Industries, Inc. maintains full compliance with this settlement agreement. Schaffer and Weld-IT Industries, Inc. shall pay a civil penalty of five thousand dollars (\$5,000 USD). Schaffer and Weld-IT Industries, Inc. shall make the payment of the penalty in the amount of five thousand dollars (\$5,000 USD) within thirty (30) calendar days from the date CARB notifies Schaffer and Weld-IT, Industries, Inc. of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Schaffer and Weld-IT Industries, Inc. 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. Schaffer

and Weld-IT Industries, Inc. 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 Schaffer and Weld-IT Industries, Inc. in accordance with Paragraph 15 (Notices).

- (11) Compliance Plan. Schaffer and Weld-IT Industries, Inc. shall submit to CARB and implement a Compliance Plan, within thirty (30) calendar days from the date CARB notifies Weld-IT Industries, Inc. of the full execution of the settlement agreement to ensure that Schaffer, Weld-IT Industries, Inc., and any companies bound to this agreement under paragraph nineteen (19) complies with all provisions of the laws and regulations outlined in the Legal Background and where applicable, the provisions and schedule in the Compliance Plan, which are incorporated by reference herein.
- (12) Other Relief. Schaffer and Weld-IT Industries, Inc. must be compliant with all certification and testing procedures required by 17 CCR 94014, including but not limited to, the prohibition of, directly or indirectly, venting gasoline vapors to atmosphere. Weld-IT Industries, Inc. must keep records to show compliance with rules as required by 17 CCR 94014 and TP-204.1.
- (13) Suspended Penalties. If Schaffer and Weld-IT Industries, Inc. fails to comply with each requirement set out in this Settlement Agreement within three years of its execution, the Parties agree that Schaffer and Weld-IT Industries, Inc. shall pay the suspended portion of this penalty, one hundred and ninety-seven thousand, five hundred dollars (\$197,500 USD) to CARB for deposit into the Air Pollution Control Fund for the purpose of carrying out its functions and duties, within sixty (60) calendar days of the notice by CARB to Schaffer and Weld-IT Industries, Inc. of the Settlement Agreement violation.
- (14) Documents. Schaffer and Weld-IT Industries, Inc. shall promptly email the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, a copy of the Payment Transmittal Form, 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, with the preference for emailed notices:

As to CARB:
California Air Resources Board

Enforcement Division / Settlement Agreements
Citations and Registrations Enforcement Branch / Equipment Registration
Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to Schaffer and Weld-IT Industries, Inc.:

Kay Lynn Schaffer
Weld-IT, Company
4477 Sheila Street
Commerce, California 90023
kayl.welditco@gmail.com

As to Weld-IT Industries, Inc. Legal Representation:

John Dratz, Jr., Esq.
3278 Wilshire Blvd., Ste. 201
Los Angeles, California 90010
john.dratz@gmail.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) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Schaffer and Weld-IT Industries, Inc. shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (17) Repeat Violations. Schaffer and Weld-IT Industries, Inc. agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (18) 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 36 paragraphs.
- (19) Binding Effect. This Settlement Agreement binds Schaffer and Weld-IT Industries, Inc., and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, and companies owned or operated by Schaffer that are subject to the Cargo Tanks Regulation, including Sam Schaffer, Inc., and

CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.

- (20) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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.
- (25) Not Tax Deductible. For purposes of this Settlement Agreement, Schaffer and Weld-IT Industries, Inc. 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.
- (26) 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.
- (27) 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.
- (28) 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.

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

PENALTY BASIS

- (33) Per Unit Penalty. The per unit penalty in this case is a maximum of seventy-five thousand dollars (\$75,000) per day under Health and Safety Code section 42402.3, for violations of the Cargo Tanks Regulation. (Cal. Code Regs., tit.17, § 94014.) The penalty of \$202,500 over an unspecified number of days of violation is for noncompliant venting or purging of four cargo tanks over two dates. The per unit penalty in this case is approximately \$33,750 for each of the first two violations identified and \$67,500 for each of the second two violations, as those occurred after Schaffer and Weld-IT Industries, Inc. was on notice of the initial two identified violations and its ongoing obligations to comply with the Cargo Tanks Regulation.
- (34) Emissions. The provisions cited above do prohibit emissions above a specified level. Without information on cargo tank emission rates, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the equipment did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- (35) 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.

(36) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Schaffer and Weld-IT Industries, Inc. 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: June 28, 2022

Schaffer and Weld-IT Industries, Inc.

Signature: /S/

Name: Kay Lynn Schaffer

Title: President

Date: May 25, 2022