

## **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 BP Products North America Inc. (BPPNA) with its principal location at 4519 Grandview Road, Blaine, Washington 98230 (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 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, or 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 (\$35,000.00 USD) for strict liability violations, fifty thousand dollars (\$50,000.00 USD) for negligent violations, and two hundred fifty thousand dollars (\$250,000.00 USD) 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 (\$25,000.00 USD). (Cal. Code Regs., tit.13, § 2250 et seq.; Health & Saf. Code § 43026, 43027, 43030.)

### **CASE BACKGROUND**

- (5) **Corporate Entity.** At all relevant times, BPPNA was organized under the laws of the State of Washington and conducted business in the State of California.
- (6) **Allegations.** This Settlement Agreement resolves Notice of Violation (NOV) F052021-BPI-RPT, which was issued on October 8, 2021. CARB alleges BPPNA violated the Motor Fuel Enforcement Marine Vessel Protocol executed on May 19, 2021 by failing to report the Retain Sample Notification of forty (40)

imports of CARBOB and Diesel to CARB, as outlined in Notice of Violation F052021-BPI-RPT. CARB requested and received additional information from BPPNA that resolves the forty-five (45) violations of failing to report start of transfer date and time alleged in NOV F052021-BPI-RPT. CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against BPPNA for each and every violation and each day.

- (7) Acknowledgment. BPPNA 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, BPPNA 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 BPPNA for the alleged violations referred to above in the Legal Background and Case Background, and BPPNA's agreement to complete all terms and conditions set forth below, CARB and BPPNA agree as follows:

- (9) Settlement Amount. BPPNA shall pay a civil penalty of four hundred thirty-six thousand, eight hundred seventy-five dollars (\$436,875.00 USD) to CARB's Air Pollution Control Fund (APCF). BPPNA also agrees to fully fund a Supplemental Environmental Project (SEP) entitled Insecticide Reduction: Empowering Children and Adults to Become Defenders of Clean Air in the amount of one hundred seventy-one thousand dollars (\$171,000.00 USD), and to contribute two hundred sixty-five thousand, eight hundred seventy-five dollars (\$265,875.00 USD) in funding to the SEP entitled Cleaner Air for Kids-Zero Emission School Bus Funding in South Coast Air Basin, consistent with CARB's SEP Policy. The total settlement amount including the civil penalty and SEP amounts combined is eight hundred seventy-three thousand, seven hundred and fifty dollars (\$873,750.00 USD). BPPNA shall make the payments within thirty (30) calendar days from the date CARB notifies BPPNA of the full execution of the Settlement Agreement in accordance with the payment schedule in Paragraph (10), (Payment Plan and Schedule).
- (10) Payment Plan and Schedule. Pursuant to this Settlement Agreement, BPPNA shall make payments as described below.

<b>Payment Due Date:</b>	<b>In the Amount of and Payable To:</b>
<b>30 Days</b>	<b>\$436,875.00 – California Air Resources Board, APCF</b>
<b>30 Days</b>	<b>\$171,000.00 – Community Partners</b>
<b>30 Days</b>	<b>\$265,875.00 – South Coast Air Quality Management District</b>

- (11) Civil Penalty Payment Method. BPPNA 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. BPPNA 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 BPPNA in accordance with Paragraph (16) (Notices).
- (12) SEP Payment Method(s). BPPNA shall fund the SEPs by wire transfer, credit card, or check, payable to the SEP recipients, California Safe Schools and South Coast Air Quality Management District, using instructions provided separately by CARB in separate Payment Transmittal Forms. BPPNA 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 BPPNA in accordance with Paragraph (16) (Notices).
- (13) Prohibition Against Financial Benefit. BPPNA has agreed that by funding the SEPs entitled Insecticide Reduction: Empowering Children and Adults to Become Defenders of Clean Air, and Cleaner Air for Kids – Zero Emission School Bus Funding in South Coast Air Basin, BPPNA will not receive any direct or indirect financial benefit; and that whenever BPPNA publicizes or refers to the SEPs or the results of the SEPs, BPPNA will state that the SEPs are being undertaken as part of the settlement of a CARB enforcement action.
- (14) Assignment of Rights. In the event either SEP Recipient/Administrator does not fully implement or complete their 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 CARB’s Air Pollution Control Fund. Accordingly, BPPNA assigns any and all rights against the SEP recipient to CARB.
- (15) Documents. BPPNA shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, and a copy

of the Payment Transmittal Form, to the address or email in Paragraph (16) (Notices).

- (16) 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  
Fuels Enforcement Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to BPPNA:

Stacy Adlman  
4519 Grandview Road  
Blaine, Washington 98230  
Stacy.Adlman@bp.com

As to BPPNA Legal Representation:

Matthew Swartz  
30 South Wacker Dr.  
Chicago, Illinois 60606  
matthew.swartz@bp.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.

- (17) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, BPPNA shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs
- (18) Repeat Violations. BPPNA agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.

- (19) 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 nine (9) pages and thirty-seven (37) paragraphs.
- (20) Binding Effect. This Settlement Agreement binds BPPNA, 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.
- (21) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (22) 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.
- (23) 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.
- (24) 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.
- (25) 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.
- (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 full payment of the civil penalty, and SEP payment(s), and all other undertakings above, CARB hereby releases BPPNA 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 thirty-five thousand dollars (\$35,000.00 USD) per day per violation under Health and Safety Code section 43027, for violations of the CaRFG Regulation. The penalty of eight hundred seventy-three thousand, seven hundred fifty dollars (\$873,750.00 USD) is for 40 reporting violations. The per unit penalty in this case is twenty-one thousand eight hundred forty-three dollars and seventy-five cents (\$21,843.75 USD) per violation.
- (34) 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 or fuel 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 may have based this penalty in part on confidential business information provided by BPPNA or confidential settlement communications.
- (37) 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 BPPNA 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 BPPNA with respect to:
    - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
    - (ii) Facts that were not disclosed by BPPNA 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, BPPNA 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 not limit or affect the rights of BPPNA 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 BPPNA, 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. BPPNA is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; BPPNA'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 BPPNA'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: Steven S. Cliff, Ph.D.

Title: Executive Officer

Date: December 19, 2022



**BP Products North America Inc.**

Signature: /S/

Name: Naty Figueroa

Title: Vice President, Refining and Products Trading Americas

Date: December 15, 2022