

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 Crimson Renewable Energy, LLC (Crimson), with its principal location at 370 17th Street, Suite 3100, Denver, Colorado 80202 (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, Crimson was organized under the laws of Colorado as a limited liability company and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) F090419-CREP-RPT, which was issued on July 28, 2022. CARB alleges that at all relevant times, Crimson was a fuel reporting entity as defined by the LCFS Regulation for the Reporting Period Quarter 2 2016 through Quarter 4 2019. CARB also alleges that at 17731 Millux Road, Bakersfield, California 93311,

Crimson sold, supplied, offered for sale, biodiesel into the State of California and submitted a report containing inaccuracies, or misreported, or entered false information, which did not conform to the requirements of the LCFS Regulation as outlined in the Notice of Violation F090419-CREP-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 Crimson for each and every day.

- (7) Acknowledgment. Crimson admits to the facts in paragraphs 1 through 5. With respect to paragraph 6, Crimson admits that it was a fuel reporting entity for the period described therein and that CARB issued the NOV as described, 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, Crimson 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 Crimson for the alleged violations referred to above in the Legal Background and Case Background, and Crimson's agreement to complete all terms and conditions set forth below, CARB and Crimson agree as follows:

- (9) Settlement Amount. Crimson's total settlement amount is one hundred thousand three hundred fifty dollars (\$100,350.00 USD). Crimson shall pay a civil penalty of fifty thousand one hundred seventy-five dollars (\$50,175.00 USD) to CARB's Air Pollution Control Fund (APCF). Crimson also agrees to fund two Supplemental Environmental Projects (SEP): Fresno TREES Phase 4 – Malaga Recreation Park in the amount of fourteen thousand nine hundred eighty-seven dollars and fifty cents (\$14,987.50 USD); and New Voices are Rising: Air Quality Week in the amount of thirty-five thousand one hundred eighty-seven dollars and fifty cents (\$35,187.50 USD), consistent with CARB's SEP Policy. Crimson shall make all payments in accordance with the payment schedule in Paragraph 10 (Payment Plan and Schedule). [Crimson shall make all installment payments within the calendar days specified in the Payment Transmittal Form(s).

- (10) Payment Plan and Schedule. Pursuant to this Settlement Agreement, Crimson shall make payments below. First payment shall be due within 10 calendar days from the date CARB notifies Crimson of full execution.

Payment Due Date:	Amount Due:	Payable to:
10 Days	\$16,725.00	California Air Resources Board
10 Days	\$11,729.17	Rose Foundation for Communities and the Environment
10 Days	\$4,995.84	Tree Fresno
40 Days	\$16,725.00	California Air Resources Board
40 Days	\$11,729.17	Rose Foundation for Communities and the Environment
40 Days	\$4,995.83	Tree Fresno
70 Days	\$16,725.00	California Air Resources Board
70 Days	\$11,729.16	Rose Foundation for Communities and the Environment
70 Days	\$4,995.83	Tree Fresno

- (11) Civil Penalty Payment Method. Crimson shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to the "California Air Resources Board," using instructions provided separately by CARB in a Payment Transmittal Form. Crimson is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Crimson shall, at the time of payment, email proof of payment and the Payment Transmittal Form to CARB at the email address provided in Paragraph 16 (Notices). 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 Crimson in accordance with Paragraph 16 (Notices).
- (12) SEP Payment Method(s). Crimson shall fund the SEPs directly to the SEP Administrators, Tree Fresno (by wire transfer) and Rose Foundation for Communities and the Environment (by check), using instructions provided by CARB in separate Payment Transmittal Forms for each SEP. Crimson is responsible for all payment processing fees. Payments shall be accompanied by the SEP Payment Transmittal Form to ensure proper application. Crimson shall provide CARB with proof of payment of both SEPs, including the SEP Payment Transmittal Forms, at the email address listed in Paragraph 16 (Notices). Should payment instructions change, CARB will provide notice to Crimson in accordance with Paragraph 16 (Notices).

- (13) Prohibition Against Financial Benefit. Crimson has agreed that by funding the SEPs entitled Fresno TREES Phase 4 – Malaga Recreation Park, and New Voices are Rising: Air Quality Week, Crimson will not receive any direct or indirect financial benefit, and that whenever Crimson publicizes or refers to the SEPs or the results of the SEPs, Crimson 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 the SEP Recipients/Administrators do not fully implement or complete the SEPs in accordance with the terms of the SEP Agreements, CARB shall be entitled to recover the full amount of the SEPs from the SEP implementers, 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 its Air Pollution Control Fund. Accordingly, Crimson assigns any and all rights against the SEP implementers to CARB.
- (15) Documents. Crimson shall promptly send the signed and dated Settlement Agreement to the address or email listed in Paragraph 16 (Notices). Crimson shall, at the time of payment, provide confirmation of payment of the civil penalty and SEPs, including Payment Transmittal Forms, to the email address listed 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
Field Operations Branch / Fuels Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov (send confirmation of payments)

As to Crimson:

Crimson Renewable Energy, LLC
370 17th Street, Suite 3100
Denver, Colorado 80202
harry.simpson@crimsonrenewable.com

As to Crimson's Legal Representation:

Lewis Ringelman P.C.
2401 East 2nd Avenue, Suite 500
Denver, Colorado 80206
DRingelman@LewisRingelman.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) Repeat Violations. Crimson 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 9 pages and 36 paragraphs.
- (19) Binding Effect. This Settlement Agreement binds Crimson, 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.
- (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) 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 full payment of the civil penalty, and SEP payment(s), and all other undertakings above, CARB hereby releases Crimson 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 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 thousand three hundred fifty dollars (\$100,350.00 USD) over an unspecified number of days of violation is for fifteen (15) inaccurate reports. The per unit penalty in this case is approximately six thousand six hundred ninety dollars (\$6,690.00 USD) per violation.
- (33) Emissions. The provisions cited above prohibit emissions above a specified level. Without additional information, it is not practicable to quantify the excess

emissions. However, since CARB has alleged that Crimson did not meet the regulatory requirements, all of the emissions from the alleged noncompliance were excess and 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 may have based this penalty in part on confidential business information provided by Crimson or confidential settlement communications.
- (36) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil claims CARB may have based on the known circumstances described in the Case Background above, including for the violations alleged in the NOV.
 - (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Crimson 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 Crimson with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Crimson 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, Crimson 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 Crimson 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 Crimson, 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. Crimson is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Crimson'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 Crimson'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: September 22, 2023

Crimson Renewable Energy, LLC

Signature: /S/

Name: Harry Simpson

Title: President and Chief Executive Officer

Date: September 12, 2023