

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is entered into between the State of California Air Resources Board (CARB), with its principal office at 1001 I Street, Sacramento, California 95814, and BP Products North America Inc. previously doing business as BP West Coast Products, LLC (BP), with its principal place of business at 30 South Wacker Drive, Suite 900, Chicago, Illinois 60606 with an office at 4519 Grandview Road, Blaine, Washington 98230 (collectively, "the Parties").

I. RECITALS

1. The Global Warming Solutions Act of 2006 authorized CARB to adopt regulations requiring the reporting and verification of greenhouse gas emissions. (Cal. Health & Saf. Code § 38530.) Pursuant to that authority, CARB adopted the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR), California Code of Regulations (CCR), title 17, §95100 *et seq.*
2. The MRR is crucial to the development of the greenhouse gas (GHG) inventory, and supports other regulatory programs, including the cap on GHG emissions established by CCR, title 17, § 95801 *et seq.*, known as the Cap-and-Trade Regulation. The MRR requires most reporting entities to submit, by April 10 of each year, an emissions data report containing emissions and product data that the reporting entity certifies is complete and accurate within stated standards. (CCR, tit. 17, § 95103.) The April 10 deadline precedes other regulatory events later in the year, such as verification under the MRR, and the distribution of allowances and surrender of compliance instruments under the Cap-and-Trade Regulation.
3. Where a report required under the MRR is late or does not meet the regulation's standards for accuracy, completeness, or third-party verification, the MRR provides that each day a report remains unsubmitted, incomplete or inaccurate constitutes a separate violation. (CCR, tit. 17, § 95107.)
4. California Health & Safety Code sections 38580 and 42402 provide that one who violates the MRR or related regulations is strictly liable for a penalty of up to \$10,000 for each violation.
5. BP's former subsidiary, BP West Coast Products LLC (BPWCP), owned and operated a calciner facility in Wilmington, California, identified in the MRR program as CARB Facility ID# 100002 (Calciner). In addition to processing petroleum coke into calcined coke, the Calciner generates significant amounts of electricity, meaning that the Calciner is an "electricity generating facility" and "generation providing entity" as defined in the MRR section 95102. In 2008, the Calciner reported emissions from the combustion of natural gas in an amount over the threshold for reporting. CARB contends that the Calciner was thus required to report under the MRR for 2008 and future years. CARB contends that for the reporting periods 2011 and 2012, BPWCP failed to comply with the

MRR because BPWCP submitted greenhouse gas emission reports relating to the Calciner that significantly misstated the magnitude of the Calciner's carbon dioxide emissions. The Calciner's subsequent owner discovered the error, informed CARB, and then submitted revised reports. Before December 31, 2019, BPWCP was a wholly-owned subsidiary of BP. On December 31, 2019, as part of a routine consolidation, BPWCP merged into BP and therefore no longer exists. BP is now responsible for any liabilities arising from the facts described in recital paragraphs 1- 7.6. In reaching this settlement, CARB considered a variety of circumstances including that this was BPWCP's first MRR violation and that BPWCP cooperated throughout the investigation.

7. In consideration of the foregoing, and of the promises and facts set forth below, 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 Agreement. In order to resolve the violations described herein, BP has taken, or agrees to take, the actions detailed below within the Terms and Release and CARB accepts this Agreement in termination and full settlement of this matter.

II. TERMS AND RELEASE

8. In consideration of CARB not filing a legal action against BP for the alleged violations referred to above, and in consideration of the terms set out below (and BP's payment of the penalties), CARB and BP agree as follows:
9. BP agrees to pay a total sum of \$624,000, as set forth in this paragraph and paragraph 12. Within 30 business days following notice from CARB that the Agreement has been signed by all parties, BP shall pay \$312,000 by wire transfer or check payable to the "Air Pollution Control Fund." The payment to the Air Pollution Control Fund should note "BP GHG MRR Settlement" in the memo section. BP shall send (1) a copy of the signed settlement agreement, (2) the check (if applicable), and (3) the payment transmittal form (Attachment A) to:

Air Resources Board, Accounting Office
P.O. Box 1436
Sacramento, CA 95812-1436
10. BP agrees to fund a Supplemental Environmental Project (SEP), as described in Attachment B, to offset a portion of the settlement amount, consistent with CARB's SEP Policy. BP agrees that by funding the SEP described In Attachment B, BP will not receive a financial benefit.
11. Within 30 business days following notice from CARB that the Agreement has been signed by all parties, BP shall pay \$312,000 by wire transfer or check payable to the SEP implementer, IQAir North America, Inc. For payment to the SEP implementer IQAir North America, Inc., BP will send the payment and payment transmittal form (Attachment A-2) to:

Nancy Dinella
Community Outreach Director
IQAir Foundation
14351 Firestone Blvd.
La Mirada, CA 90638

12. BP will send a copy of all checks or proof of wire transfer(s) made under paragraphs 9 and 11 above to:

Satapana Buthken
Air Resources Board
P.O. Box 2815
Sacramento, CA 95812-2815

III. GENERAL PROVISIONS

13. The Parties further agree that the payments described in paragraphs 9 and 11 are punitive in nature, rather than compensatory. These payments, arising from the facts described in recital paragraphs 1- 7, are non-dischargeable under 11 United States Code §523(a)(7).
14. This Agreement constitutes the entire agreement and understanding between CARB and BP concerning the subject matter hereof, and supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between CARB and BP concerning the subject matter hereof.
15. This Agreement shall apply to and be binding upon BP, and any receivers, trustees, successors and assignees, and subsidiaries. This Agreement shall apply to and be binding upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
16. The effective date of this Agreement shall be the date of the last signature. The Parties may execute and deliver this Agreement by transmitting an authorized signature by fax or .pdf document. Copies of this Agreement signed and delivered by means of faxed signatures or signatures in a .pdf document shall have the same effect as copies executed and delivered with original signatures.
17. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is In writing and signed by all parties to this Agreement.
18. The headings in this Agreement are not binding, are for reference only, and do not limit, expand, or otherwise affect the contents of this Agreement.
19. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid, or unenforceable, the remainder of this Agreement remains in full force and effect.

20. This 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.

IV. PENALTY DETERMINATION

21. California Health & Safety Code section 39619.7 requires CARB to explain the manner in which the penalty was determined, the law on which it is based, and whether that law prohibits emissions at a specified level. CARB considered all relevant factors, including those listed at California Health & Safety Code section 42403, explained the manner in which the penalty amount was calculated, and identified the provision of law under which the penalty is being assessed. This information is provided throughout this Agreement and is summarized below.

The manner in which the penalty was determined, including any per-unit penalty. Penalties must be set at levels sufficient to deter violations. The penalty in this matter was determined in consideration of all relevant circumstances, including the unique circumstances of this case, and the eight factors specified in California Health & Safety Code section 42403. CARB considered the reporting entity's size, the extent to which the monitoring and reporting deviated from MRR requirements, the cause of any errors and omissions, and the magnitude of any errors. CARB considered those circumstances together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, penalties sought in other cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger.

In this matter, the penalty equates to \$1500 for each day that the report remained inaccurate. The penalty was discounted based on the fact that BP made diligent efforts to comply and cooperate with CARB's investigation.

The legal provisions under which the penalty was assessed and why those provisions are appropriate. The penalty is based on California Health & Safety Code section 42402 and CCR, title 17, section 95107, the provisions intended to govern MRR violations.

Whether the governing provisions prohibit emissions at a specified level. The MRR does not prohibit emissions above a stated level, but California Health & Safety Code section 38580(b)(2) specifies that violations of any regulation under the Global Warming Solutions Act of 2006 shall be deemed to result in an emission for purposes of the governing penalty statutes.

22. The penalty was based on confidential settlement communications between CARB and BP. The penalty is the product of an arm's length negotiation between CARB and BP and reflects CARB's assessment of the relative strength of its case against BP, the desire to avoid the uncertainty, burden and expense of litigation, to obtain swift compliance with the law, and to remove any unfair advantage that BP may have secured from its actions.

- 23. In consideration of the payments and undertaking in paragraphs 9, 10, 11, and 12 above, CARB hereby releases BP and its receivers, trustees, successors, assignees, and subsidiary and parent corporations from any claims that CARB and any successor agency may have based on the alleged violations described in this Agreement.
- 24. Each of the undersigned represents and warrants that they have the full authority to enter into this Agreement.

V. ENFORCEMENT

- 25. CARB expressly reserves the right to bring an enforcement action based on violations of law not covered In this Agreement and to seek whatever fines, penalties, or remedies are provided by law, including Injunctive relief.
- 26. In the event CARB believes BP has defaulted under this Agreement, the Parties agree to the following:
 - a. The Superior Court of California, County of Sacramento (the "Court") has jurisdiction over the Parties and over the subject matter of this Agreement;
 - b. Venue is proper in Sacramento; and
 - c. CARB may simultaneously file a complaint, proposed stipulated judgment containing the terms of paragraphs 8 through 12, above, and a noticed motion seeking entry of a stipulated judgment. Within the time allowed by California law, including any applicable rules of court, BP may file an opposition limited to the issues of whether BP has defaulted and any issue raised in CARB's filing.

California Air Resources Board

BP Products North America Inc.

By: /S/

By: /S/

Richard W. Corey
Executive Officer

Craig Bealmear
BP Products N. America CFO

Date: 2/26/2020

Date: 14/Feb/2020