

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 place of business at 1001 I Street, Sacramento, California, 95814, and Kern Oil & Refining Co. (Kern) with its principal place of business at 7724 E. Panama Lane, Bakersfield, California 93307 (collectively, the Parties).

This agreement settles Notice of Violation (NOV) **F122118-KRNR-RPT**. CARB issued this NOV on **October 23, 2019**, alleging that Kern offered for supply, supplied, offered for sale, sold or transported eighteen uncertified blends of California Reformulated Gasoline Blendstock for Oxygenate Blending (CARBOB) between May 11, 2017 and December 21, 2018.

I. RECITALS

- (1) California Health and Safety Code section 39003 assigns CARB with attaining and maintaining ambient air quality standards.
- (2) Title 13, California Code of Regulations, Sections 2250-2273.5 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; hereinafter California Reformulated Gasoline (CaRFG) regulation).
- (3) The standards and compliance requirements in the CaRFG regulation apply to all persons who sell, supply, or offer for sale, gasoline for motor vehicles in the State of California. (Cal. Code Regs., tit. 13, §2261).
- (4) The California gasoline must conform to all requirements identified in the PM Alternative Specification Based on the California Predictive Model. (Cal. Code Regs., tit. 13, § 2265).
- (5) The standards and compliance requirements for California gasoline or transactions involving California gasoline also apply to California reformulated gasoline blendstock for oxygenate blending (CARBOB) or transactions involving CARBOB, including, but not limited to, CaRFG regulation sections 2261, 2262, 2262.3, 2262.4, 2262.5(a), (b), (c), and (e), 2262.6, 2264, 2264.2, 2265, 2266, 2267, 2268, 2270, 2271 and 2272. (Cal. Code Regs., tit.13, §§ 2260; 2272). Whenever the term "California gasoline" is used in this Agreement, the term means California gasoline or CARBOB. (Cal. Code Regs., tit. 13, § 2266.5).
- (6) CARB regulations state, "[E]ach sale of California gasoline at retail, and each dispensing of California gasoline into a motor vehicle fuel tank, shall also be deemed a sale or supply by any person who previously sold or supplied such gasoline in violation of any applicable sections of this subarticle." (Cal. Code Regs., tit. 13, § 2268).

- (7) Failure to comply with the requirements of the CaRFG regulation is a violation of state law resulting in penalties. Health and Safety Code section 43027, subdivision c) states, “[a]ny person who violates any provision of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, exclusive of the documentation requirements specified in subdivision (d), is strictly liable for a civil penalty of not more than thirty- five thousand dollars (\$35,000).”
- (8) Health and Safety Code section 43030, subdivision (a) states “[f]or the penalties prescribed in sections 43027 and 4328, each day during any portion of which a violation occurs is a separate offense.”
- (9) Health and Safety Code section 43031, subdivision (b) states, “[i]n determining the amount assessed, ...the state board, in reaching any settlement, shall take into consideration all relevant circumstances, including, but not limited to, all of the following: (1) The extent of harm to public health, safety, and welfare caused by the violation. (2) The nature and persistence of the violation, including the magnitude of the excess emissions. (3) The compliance history of the defendant, including the frequency of past violations. (4) The preventive efforts taken by the defendant, including the record of maintenance and any program to ensure compliance. (5) The innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods. (6) The efforts to attain, or provide for, compliance. (7) The cooperation of the defendant during the course of the investigation and any action taken by the defendant, including the nature, extent, and time of response of any action taken to mitigate the violation. (8) For a person who owns a single retail service station, the size of the business.”
- (10) CARB alleges in **NOV F122118-KRNR-RPT** that following a discussion between Kern and CARB regarding verification of receipt of a Predictive Model notification on January 3, 2019; CARB discovered that between May 11, 2017 and December 21, 2018, Kern sold, offered for sale, supplied, offered for supply, or transported **eighteen** blends of uncertified CARBOB. Kern failed to notify CARB of the specifications of the fuel as required under section 2265. CARB alleges that without notification, a blend is uncertified.
- (11) CARB alleges that the sale, offer for sale, supply, offer for supply or transportation of uncertified CARBOB was unlawful and in violation of Cal. Code Regs., tit. 13, § 2261, 2265, and 2268.
- (12) Kern does not contest the facts or allegations, as applicable, described in recital paragraphs (1) through (10), but denies any liability resulting from said facts or allegations. Kern has cooperated in CARB’s investigation of the allegations described herein.
- (13) 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, Kern has taken, or agrees to take, the action enumerated below within the Terms and Conditions. Further, CARB accepts this Agreement in termination and settlement of this matter.

II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against Kern for the alleged violations referred to above, and in consideration of the terms set out below and Kern's payment of the penalty and funding of Supplemental Environmental Project (SEP) set forth in section (2) below, CARB and Kern agree as follows:

- (1) **Kern** has agreed to pay the sum of **fifty-four thousand dollars (\$54,000.00)** as a civil penalty for the alleged violations in NOV F122118-KRNR-RPT.
- (2) **Kern** has agreed to undertake a Supplemental Environmental Project (SEP) as described in **Attachment B**, to offset a portion of the settlement amount, consistent with CARB's SEP policy.
- (3) **Kern** shall pay a civil penalty and fund the SEP described above, in the total amount of **\$54,000.00**. **Kern** shall pay \$27,000.00 to the **AIR POLLUTION CONTROL FUND** (APCF) and the remaining \$27,000.00 shall be paid to the SEP implementer Tree Fresno.
- (4) Upon execution of this Agreement, **Kern** shall make a total payment of **twenty-seven thousand dollars (\$27,000.00)** to the APCF **no later than thirty (30) business days** after Kern receives a mailed copy of the fully executed Agreement from CARB. The payment along with the "Settlement Agreement Payment Transmittal Form" (**Attachment A**) shall be submitted to:

California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812-1436

- (5) Upon execution of this Agreement, **Kern** shall make a total payment of **twenty-seven thousand dollars (\$27,000.00)** to **Tree Fresno no later than thirty (30) business days** after Kern receives a mailed copy of the fully executed Agreement from CARB. The payment along with the "Settlement Agreement Payment Transmittal Form" (**Attachment A-2**) shall be submitted to:

Tree Fresno
ATTN: Mona C. Cummings, Chief Executive Director
3150 E. Barstow Avenue
Fresno, California 93740

- (6) Kern will send a copy of payment checks made to the APCF and the Tree Fresno to:
- Ms. Luz Amanda Ciccarelli, APS
California Air Resources Board
8940 Ferguson Avenue
Sacramento, California 95828
- (7) Kern has agreed that by funding the SEP project, Kern will not receive any direct or indirect financial benefit, and that whenever it publicizes a SEP or the results of the SEP, it will state in prominent manner that the project is being undertaken as part of the settlement of an enforcement action
- (8) In addition, if the Attorney General files a civil action to enforce this settlement agreement against **Kern**, **Kern** shall pay all reasonable costs of investigating and prosecuting the action, including reasonable expert fees (if appropriate), reasonable attorney's fees, and reasonable costs, if and when the Attorney General is deemed to be a prevailing party by a court of competent jurisdiction.
- (9) **Kern** has demonstrated to the satisfaction of CARB that the alleged violations have been corrected.
- (10) **Kern** shall not violate any provision of the CaRFG regulation. Any future repeat violations may result in an increased penalty amount.
- (11) Now therefore, in consideration of the payment by Kern to the California Air Pollution Control Fund in the amount specified above, CARB hereby releases Kern and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, and subsidiary and parent corporations from any and all claims that CARB may have based on the allegations described in recital paragraphs (1) through (13). The undersigned represent that they have the authority to enter this Agreement.

III. GENERAL PROVISIONS

- (1) This Agreement constitutes the entire agreement and understanding between CARB and **Kern** concerning the subject matter hereof, and supersedes and replaces any and all prior negotiations and agreements of any kind of nature, whether written or oral, between CARB and **Kern** concerning the subject matter hereof.
- (2) The payment obligation under section II shall apply to and be binding upon **Kern** and its successors and assignees, parent corporations, and subsidiaries, if any; and the release obligation under section II 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.

- (3) The terms and conditions set forth in this Agreement shall remain valid and enforceable notwithstanding any future violations that may occur.
- (4) The effective date of this Agreement shall be the date of the last signatory.
- (5) 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.
- (6) 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 in any jurisdiction, the remainder of this Agreement remains in full force and effect.
- (7) The headings in this Agreement are not binding and are for reference only and do not limit, expand, or otherwise affect the contents of this Agreement.
- (8) 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.
- (9) It is further agreed that the stipulated penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7).
- (10) This agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either Party on the ground that said Party drafted it.
- (11) The failure of any Party to enforce any provision of this 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 Agreement.
- (12) Each of the undersigned represents and warrants that he or she has full authority to enter into this Agreement.

IV. PENALTY DETERMINATION

- (1) Pursuant to Health and Safety Code section 39619.7, CARB must provide information on the basis for the penalty it seeks. This information is provided throughout this settlement agreement and summarized below.

The manner in which the penalty amount was determined, including a per unit, per day, per violation, or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43031, subdivision (b).

The per unit penalty in the case of NOV F122118-KRNR-RPT is a maximum of \$35,000 per day per strict liability violation. CARB alleges that eighteen uncertified blends of CARBOB were sold, supplied and transported resulting in **eighteen violations**. The penalty obtained in this case is **\$3,000.00 per violation**. CARB discovered this violation, but CARB considered several other factors in Kern's favor. The lower penalty reflects the consideration of a number of facts, including: this appears to have been an unintentional violation, Kern has a longstanding compliance history, and Kern made efforts to comply and to cooperate with the investigation.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

CARB alleges that the penalty provisions being applied in this case, Health and Safety Code sections 43027 and 43030, are appropriate because Kern allegedly sold, offered for sale, supplied, or offered for supply or transported CARBOB in California in violation of Cal. Code Regs., tit.13, §§ 2250–2273.5.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The provisions cited above do not prohibit emissions above a specified level. CARB alleges that because the fuel did not meet California regulatory requirements, any emissions attributable to them are illegal. However, in this case, Kern later submitted documentation alleging that the blends passed the predictive model and therefore may have been found compliant if Kern had timely notified CARB.

- (2) Kern acknowledges that CARB has complied with Health and Safety Code section 39619.7 in prosecuting or settling these cases. Specifically, CARB has considered all relevant facts, including those listed at Health and Safety Code section 43031, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is being assessed under a provision of law that does not prohibit the emission of pollutants at a specified level.
- (3) Penalties were determined based on the unique circumstances of each matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar case negotiations, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.
- (4) The penalty in each case was based in part on confidential business information provided by Kern that is not retained by CARB in the ordinary course of business. The penalty in each case was also based on confidential settlement

communications between CARB and Kern that CARB does not retain in the ordinary course of business. Each penalty also reflects CARB's assessment of the relative strength of the case against Kern, 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 Kern may have secured from its actions.

V. STIPULATED CONSENT JUDGMENT

- (1) The parties stipulate to the entry of a Consent Judgment if Kern defaults on any of the terms and conditions of this agreement and hereby waives the right to challenge the Consent Judgment of its terms. Before declaring a default of the terms and conditions of this Agreement, CARB will first provide Kern 10 calendar days written notice of the claimed default and request to cure.
- (2) The Consent Judgment does not constitute evidence of admission by Kern regarding any issue of law or fact alleged in the Agreement but sets forth the obligations of Kern and constitutes the complete, final, and exclusive agreement between CARB and Kern.
- (3) 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 provided by law, including injunctive relief.
- (4) In the event CARB seeks a Consent Judgment based on Kern's default under this Agreement, the Parties agree to the following:
 - a. Superior Court of California, County of Sacramento (Court) has jurisdiction over the Parties and to the subject matter of this action;
 - b. Venue is proper in this Court;
 - c. The Court has personal jurisdiction over Kern for purposes of enforcing the terms of the Consent Judgment; and
 - d. The obligations under this Agreement shall be deemed the terms and conditions of the Consent Judgment.

