

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is entered into between the State of California Air Resources Board (CARB) with the principal location at 1001 I Street, Sacramento, California 95814; and **BP West Coast Products LLC (BP)**, with an office at 4 Centerpointe Drive 4-481, La Palma, California 90623 (collectively, the Parties).

This agreement settles the following notices of violation (NOV):

1. **NOV F10-5-2.** This NOV was issued on July 14, 2010, for supplying CARBOB that failed to conform to the allowable limit of Sulfur as specified in the submitted predictive model.
2. **NOV F10-5-3.** This NOV was issued on July 14, 2010, for supplying CARBOB that failed to conform to the allowable limit of Aromatics as specified in the submitted predictive model.

### I. RECITALS

- (1) California Health and Safety Code section 39003 assigns to CARB the duty to attain and maintain air quality standards.
- (2) California regulations 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) CARB alleges that 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(b)(1)(B)).
- (4) CARB alleges that California gasoline must conform to any Predictive Model flat limit identified in the Predictive Model alternative specification. (Cal. Code Regs., tit. 13, § 2265).
- (5) CARB alleges that 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) "[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) 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 43028, each day during any portion of which a violation occurs is a separate offense."
- (9) In determining the penalty amount, the state board considers all relevant circumstances, including the eight factors set forth in Health & Safety Code section 43031.
- (10) CARB alleges in NOV F10-5-2 that on November 4, 2009, BP sold, offered for sale, supplied, offered for supply, and/or transported CARBOB that exceeded the sulfur value reported in the CARBOB Predictive Model notification from five marine vessel compartments on one day for a total of five violation-days.
- (11) CARB alleges in NOV F10-5-3 that based retain samples collected on March 2, 2010, BP sold, offered for sale, supplied, offered for supply, and/or transported CARBOB that exceeded the aromatic value reported in the CARBOB Predictive Model notification from two tanks for a total of five violation-days.
- (12) CARB alleges that the sale, offer for sale, supply, and/or transportation of non-complying CARBOB was unlawful and in violation of CaRFG regulation sections 2261, 2265, 2266.5, and 2268.
- (13) BP denies the allegations and legal interpretations in the foregoing recital paragraphs, as well as those in paragraph 35 and 36, and any liability resulting from said allegations and legal interpretations.
- (14) 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 enumerated below within the Terms and Release. Further, CARB accepts this Agreement in termination and settlement of this matter. BP is entering into this Agreement solely for the purpose of settlement and resolution of this matter with CARB.

## II. TERMS AND RELEASE

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, CARB and BP agree as follows:

- (15) The Parties shall exchange signed copies of this Agreement by November 3, 2017. This Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement. BP shall send the original signed Agreement and any future mailings or documents required per the terms of this Agreement to:

Mr. Juan Osornio, Manager  
Fuels Enforcement Section, Enforcement Division Air  
Resources Board  
9480 Telstar Avenue, Annex 3 E1  
Monte, California 91731

- (16) BP has agreed to pay the sum of \$125,000.00 as a penalty for NOV F10-5-2.  
(17) BP has agreed to pay the sum of \$125,000.00 as a penalty for NOV F10-5-3.  
(18) BP shall pay the total amounts described above as a penalty no later than December 8, 2017. Payment shall be made as described below:

- \$250,000.00 payable to the California Air Pollution Control Fund

BP will send the California Air Pollution Control Fund payment to:

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

- (19) BP and CARB waive all rights to appeal or otherwise challenge any order or Judgment in *People ex rel. California Air Resources Board v. BP West Coast Products, LLC*, Contra Costa County Superior Court, case C12-00567 (the Cherry Point Action).
- (20) BP has demonstrated to the satisfaction of CARB that the alleged violations described herein have been corrected

- (21) Now therefore, in consideration of the payment of BP to the Air Pollution Control Fund, CARB hereby releases BP and its principals, officers, agents, directors, receivers, trustees, employees, parents, subsidiaries, predecessors, successors, and assignees, and each of their officers, directors, agents, and employees from any and all claims that CARB may have based on the facts and allegations described in paragraphs 1 through 12 of the Recitals.
- (22) No provision of the Agreement shall be construed as an admission of any wrongdoing, or of a violation of the California Code of Regulations or any other statute, regulation, ordinance, order, or legal requirement by BP, its principals, officers, directors, agents, employees, parents, or subsidiaries. BP does not admit the truth of any of the alleged facts contained herein. The Parties acknowledge that the agreements, statements, stipulations, and actions herein are made solely for the purpose of settling this matter economically and without further litigation or expense. BP does not endorse CARB's method of penalty calculation in this case and reserves the right to challenge it in future cases, should they arise.

### III. GENERAL PROVISIONS

- (23) This Agreement constitutes the entire agreement and understanding between CARB and BP concerning NOV's F10-5-2, F10-5-3, and the Cherry Point Action, and supersedes and replaces any and all prior negotiations and agreements of any kind of nature, whether written or oral, between CARB and BP concerning the subject matter hereof.
- (24) The payment obligation in paragraphs 16 - 18 and the release obligations in paragraph 22 shall apply to and be binding upon BP and its officers, directors, receivers, trustees, employees, successors and assignees, members, parent corporations, and subsidiaries, if any; and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (25) The terms and conditions set forth in this Agreement shall remain valid and enforceable notwithstanding any future violations that may occur.
- (26) The effective date of this Agreement shall be the date upon which BP executes this Agreement.
- (27) 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.
- (28) 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.

- (29) 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.
- (30) 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.
- (31) 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).
- (32) 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.
- (33) 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. 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 Agreement or otherwise provided by law.
- (34) Each of the undersigned represents and warrants that he or she has full authority to enter into this Agreement.

#### IV. PENALTY DETERMINATION

- (35) 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. CARB alleges the following:

**The manner in which the penalty amount was determined, including a per unit 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 sections 43024 and 43031.

The per unit penalty in the case of NOV F10-5-2 is a maximum of \$35,000 per day per strict liability violation. CARB alleges five violation-days during which BP supplied non-complying CARBOB. The penalty obtained in this case is **\$25,000.00 per day**. The lower penalty reflects the consideration of a number of facts, including the risk and expense of litigation.

The per unit penalty in the case of NOV F10-5-3 is a maximum of \$35,000 per day per strict liability violation. CARB alleges five violation-days during which BP supplied non-complying CARBOB. The penalty obtained in this case is **\$25,000.00 per day**. The lower penalty reflects the consideration of a number of facts, including the risk and expense of litigation.

**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 BP allegedly sold, offered for sale, supplied, or offered for supply and/or transported CARBOB in California in violation of California Code of Regulations, title 13, sections 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 standards, any emissions attributable to them are illegal. However, it is not practicable to quantify these emissions.

- (36) Penalties were determined based on the unique circumstances of this 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.

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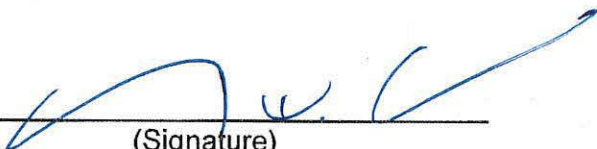
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- (37) The penalty in this case was based in part on confidential business information provided by BP that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and BP that CARB does not retain in the ordinary course of business. The penalty also 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 remove any unfair advantage that BP may have secured from its actions.

**ACKNOWLEDGED AND ACCEPTED BY:**

**California Air Resources Board**

Dated: 1/29/2018 By:   
(Signature)  
Richard W. Corey  
Executive Officer

**BP West Coast Products LLC**

Dated: \_\_\_\_\_ By:   
(Signature)  
Printed Name: STEPHEN C. LEE  
Title: Vice President