

This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (CARB) and ExxonMobil Oil Corporation (the Company), 22777 Springwoods Village Parkway, Spring, Texas 77389.

## RECITALS

1. The Global Warming Solutions Act of 2006 authorized CARB to adopt regulations requiring the reporting and verification of greenhouse gas emissions. (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 is certified to be 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. CARB contends that for the reporting periods of 2013 and 2014, the Company failed to comply with the MRR by submitting inaccurate greenhouse gas emissions data reports related to Complexity Weighted Barrel (CWB) production data at the Torrance Refinery, CARB facility ID # 100217. Errors due to inaccurate meter measurement resulted with material over-reporting of covered CWB product data for these years.
6. In this matter, there were several mitigating factors, including commitment by the Company to ensuring meter accuracy by hiring a third party consulting firm to assess facility meters for accuracy in 2014 and self-disclosure of the error to CARB by the Company staff prior to reporting 2015 emissions data.
7. To resolve these alleged violations, the Company has agreed to take the actions enumerated below. CARB accepts this Agreement in termination and settlement of this matter.
8. 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 violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, CARB and the Company agree as follows.

### TERMS

9. Within 15 business days following notice from CARB that the Agreement has been signed all parties, the Company shall pay \$493,500 to CARB's Air Pollution Control Fund consistent with the payment instructions provided by CARB in Attachment A to this Agreement.

10. Within 15 business days following notice from CARB that the Agreement has been signed all parties, the Company 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

11. Within 15 business days following notice from CARB that the Agreement has been signed all parties, the Company will send a *copy* of all checks or proof of wire transfer(s) to:

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

12. The parties further agree that the payments described in paragraph 9 are punitive in nature, rather than compensatory. These payments, arising from the facts described in recital paragraphs 1-8, are non-dischargeable under 11 United States Code § 523(a)(7).

13. This Agreement binds the Company, and any receivers, trustees, successors and assignees, subsidiary and parent corporations. This Agreement also binds CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

14. This Agreement constitutes the entire agreement and understanding between CARB and the Company concerning the subject matter hereof, and supersedes all prior negotiations and agreements between CARB and the Company concerning the subject matter hereof.

15. 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.

16. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

17. 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.

18. 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.

19. This Agreement does not constitute an admission or acknowledgement of any fact, conclusion of law, or liability by any party to this Agreement.

### **The Penalty's Basis**

20. 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 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, which provision does not prohibit the emission of pollutants at a specified level. That information is summarized here.

**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 based on all relevant circumstances, including the unique circumstances of this case, and the eight factors specified in 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 \$700 for each day that the report remained inaccurate. The penalty was significantly discounted because the company disclosed the error to CARB and committed to ensuring meter accuracy by hiring a third-party consulting firm to assess facility meters for accuracy.

**The legal provisions under which the penalty was assessed and why those provisions are appropriate.** The penalty is based on 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 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.

21. The penalty was based on confidential settlement communications between CARB and the Company. The penalty is the product of an arm's length negotiation between CARB and the Company and reflects CARB's assessment of the relative strength of its case against the Company, 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 the Company may have secured from its actions.

22. In consideration of the payments and terms in paragraphs 9 through 19, above, CARB hereby releases the Company and its receivers, trustees, successors, assignees, and subsidiary and parent corporations from any claims the CARB may have based on the circumstances described in paragraphs 1-8, above.

23. The undersigned represent that they have the authority to enter into this Agreement.

#### **STIPULATED CONSENT JUDGMENT**

24. The Parties stipulate to the entry of a Consent Judgment if the Company defaults on any of the terms and conditions of this Agreement and hereby waives the right to challenge the Consent Judgment or its terms. At least 10 days before declaring a default of the terms and conditions of this Agreement, CARB will first provide the Company written notice of the claimed default and request to cure.

25. The Consent Judgment does not constitute evidence of an admission by the Company regarding any issue of law or fact alleged in the Agreement but sets forth the obligations of the Company and constitutes the complete, final, and exclusive agreement between CARB and the Company.

26. 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.

27. In the event CARB seeks Consent Judgment based on the Company'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 the Company 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.

**California Air Resources Board**

**ExxonMobil Oil Corporation**

By: \_\_\_\_\_

Richard W. Corey  
Executive Officer

Date: \_\_\_\_\_

7/15/2019

By: \_\_\_\_\_

Name: Steven R. Cope  
Title: Refining Director

Date: \_\_\_\_\_

06/28/2019