

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 George E. Warren Corporation (GEW) with its principal place of business at 1261 Broadway, Suite 815, New York, NY, 10001 (collectively, the Parties).

This agreement settles Notice of Violation (NOV) F071617-GEWI-OLE. CARB issued this NOV to GEW on October 12, 2017, for supplying CARBOB that exceeded the allowable limit of the olefin volume percent as specified in the submitted predictive model.

I. RECITALS

- (1) California Health and Safety Code section 39003 assigns CARB with attaining and maintaining 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 applies to all persons who sell, supply, offer for sale or offer for supply, gasoline for motor vehicles in the State of California. (Cal. Code Regs., tit. 13, § 2261).
- (4) The California gasoline must conform to any Predictive Model flat limit identified in the Predictive Model Alternative Specification. (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) CaRFG regulation section 2262.3(a) (Compliance with cap limits) provides in pertinent part as follows: "No person shall sell, offer for sale, supply, offer for supply, or transport California gasoline which exceeds an applicable cap limit for sulfur, benzene, aromatic hydrocarbons, olefins, T50 or T90 set forth in section 2262.

- (7) CaRFG regulation section 2265(a)(2)(B) requires, with regard to a predictive model alternative specification, that a producer or importer "notify the Executive Officer of . . . (2) the PM alternative specifications that will apply to the final blend, including for each specification whether it applies as a PM flat limit or a PM averaging limit; (3) the numerical values for percent change in emissions for oxides of nitrogen, total ozone forming potential, and potency-weighted toxic air contaminants as determined in accordance with the applicable Predictive Model Procedures"
- (8) CaRFG regulation section 2265(b) (Prohibited activities regarding PM alternative gasoline formulations) provides in pertinent part as follows: "(1) No producer or importer shall sell, offer for sale, supply, or offer for supply from its production or import facility California gasoline which is reported pursuant to section 2265(a) as a PM alternative gasoline formulation subject to PM alternative specifications if . . . (C) The gasoline fails to conform with any PM flat limit in the identified PM alternative specifications"
- (9) The Protocol between GEW and CARB, executed on July 6, 2017, provides that "a marine vessel delivering imported motor fuel to a California facility shall be treated as the import facility of that motor fuel," under certain conditions, including "The motor fuel in each of the marine vessel's compartment shall constitute a separate final blend."
- (10) "[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." (CaRFG regulation § 2268).
- (11) 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)."
- (12) 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."
- (13) Health and Safety Code section 4301, subdivision (b) states "[I]n determining the penalty amount, the state board shall take into consideration all relevant circumstances, including, but not limited to the: (1) Extent of harm to public health, safety, and welfare caused by the violation; (2) Nature and persistence of the violation, including the magnitude of the excess emissions; (3) Compliance history of the defendant, including the frequency of past violations; (4) Preventive efforts taken by the defendant, including the record of maintenance and any program to ensure compliance; (5) Innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test

methods; (6) Efforts to attain, or provide for, compliance; (7) 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; and (8) For a person who owns a single retail service station, the size of the business.”

- (14) This matter involves one shipment of CARBOB fuel aboard the Muhut Silver, which arrived at the Port of Los Angeles, on July 15, 2017. CARB alleges that starting July 15, 2017 GEW sold, offered for sale, supplied, offered for supply and/or transported CARBOB from ten compartments on the Muhut Silver vessel that exceeded the olefin value reported in the CARBOB Predictive Model notification for one day.
- (15) CARB alleges that starting July 15, 2017, GEW sold, offered for sale, supplied, offered for supply and/or transported CARBOB from four compartments on the Muhut Silver vessel that exceeded the olefin value reported in the CARBOB Predictive Model notification for two days.
- (16) CARB alleges that, on or prior to July 15, 2017, GEW submitted to CARB predictive model information for fuel in each of the fourteen compartments of its import vessel, which authorized an olefin content of 11.1%.. CARB alleges that the fuel GEW allegedly sold, offered for sale, supplied, or offered for supply from the Muhut Silver shipment exceeded the threshold concentration of olefins allowed under the predictive model. GEW alleges that a third-party independent laboratory certified that the olefin content for the fuel in each of the compartments aboard the Muhut Silver was below the 11.1% concentration allowed by the predictive model. GEW further alleges that it was based on the results of the independent third-party laboratory certification that GEW proceeded to discharge the fuel from the Muhut Silver to the California facility.
- (17) CARB alleges that on or after July 15, 2017, California gasoline supplied by GEW from the Muhut Silver, containing gasoline component material which exceeded the olefin threshold was sold at retail.
- (18) CARB alleges that the sale, offer for sale, supply, offer for supply, transportation and blending of non-complying CARBOB was unlawful and in violation of CaRFG regulation sections 2261, 2262, 2265, 2266.5, and 2268. GEW denies the preceding allegations and further makes no admission of any fact or liability and specifically denies any liability relating to such allegations.
- (19) GEW has cooperated in CARB's investigation of the allegations described herein. GEW also undertook its own internal investigation to ascertain why the CARB olefin results were different from those reported and certified by the independent testing laboratory.
- (20) 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 this matter and voluntarily agree to resolve this matter completely by means of this Agreement, without the need for litigation. GEW is entering into this Agreement solely for purposes of settlement and resolution of this matter with CARB. Further, CARB accepts this Agreement in termination and full and complete settlement of this matter.

II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against GEW for the alleged violations referred to above, and in consideration of the terms set out below (and GEW payment of the penalties and funding of Supplemental Environmental Projects (SEP) set forth in Section (2) below), CARB and GEW agree as follows:

- (1) GEW has agreed to pay the sum of seven hundred and thirty-five thousand dollars (\$735,000.00) as a civil penalty for the alleged violations in (NOV) F071617-GEWI-OLE.
- (2) GEW has agreed to undertake the following Supplemental Environmental Projects (SEPs) as described in Attachments B through G to offset a portion of the settlement amount, consistent with CARB's SEP Policy:
 1. Air Filtration and Monitoring in Barrio Logan,
 2. Community Diesel Education and Emissions Reduction Project (DEEP),
 3. Healthy Air Neighborhoods—Fresno,
 4. PM Sensor Network,
 5. Valley Air Pollution, Health, and Education Research (VAPHER) conference, and
 6. San Ysidro Community Air Monitoring Network Sustainability.
- (3) GEW shall pay the civil penalty and fund the SEPs described above, in the total amount of \$735,000.00. GEW shall pay \$383,673.00 to the California Air Pollution Control Fund (APCF) and the remaining \$351,327.00 to the SEPs distributed as described below:
 - \$383,673.00 payable to the California APCF.
 - \$55,634.00 payable to the Supplemental Environmental Project (SEP) titled Air Filtration and Monitoring in Barrio Logan.
 - \$10,000.00 payable to the SEP titled Community Diesel Education and Emissions Reduction Project (DEEP).
 - \$35,000.00 payable to the SEP titled Healthy Air Neighborhoods—Fresno.

- \$52,500.00 payable to the SEP titled PM Sensor Network.
 - \$47,688.00 payable to the SEP titled Valley Air Pollution, Health, and Education Research (VAPHER) conference.
 - \$150,505.00 payable to the SEP titled San Ysidro Community Air Monitoring Network Sustainability.
- (4) GEW will send the California APCF payment, along with the attached Settlement Agreement Payment Transmittal Form (Attachment A) to:

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

- (5) For payments made to the SEP Recipients, please send the payment along with the attached "Supplemental Environmental Project Payment Transmittal Form" (Attachments B-2 to G-2) to the SEP addresses listed in Attachments B through G, respectively. In addition, a copy of each payment check made to a SEP Recipient shall be mailed to:

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

Mr. Thomas Lopez, APS
California Air Resources Board
9480 Telstar Avenue, Annex 3
El Monte, California 91731

- (6) GEW shall mail the payments no later than ten business days after both parties sign this Agreement and GEW receives notification by CARB that CARB has signed the Agreement.
- (7) GEW has agreed that by funding the SEPs listed above, GEW 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 a prominent manner that the project is being undertaken as part of the settlement of an enforcement action
- (8) Upon agreeing to the terms set forth in the SEP Agreements, and funding the SEPs, GEW is released of all liabilities as they relate to the SEPs.
- (9) In the event the SEP is not fully implemented in accordance with the terms of the SEP Agreement, CARB (as the third party beneficiary) shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount waived

based on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the California APCF. Accordingly, GEW assigns any and all rights against the SEP implementer to CARB.

- (10) In addition, if the Attorney General files a civil action to enforce this settlement agreement against GEW, GEW 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.
- (11) GEW has demonstrated to the satisfaction of CARB that the alleged violations described herein have been corrected.
- (12) Effect of Untimely Payment. If any payment is more than fifteen (15) business days late, the entire remaining balance becomes immediately due and payable, unless GEW and CARB have agreed in writing to an extension of the payment date, for good cause.
- (13) Now therefore, in consideration of the payment from GEW to the California APCF and the funding of the SEPs set forth in section (3), and other good and valuable consideration, CARB hereby releases and forever discharges GEW and their principals, officers, directors, agents, predecessors, successors and assigns, from any and all claims that CARB has or may have based on the facts, allegation, and violations alleged in paragraphs (1) through (18) of the Recitals.

III. GENERAL PROVISIONS

- (1) This Agreement constitutes the entire agreement and understanding between CARB and GEW 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 GEW concerning the subject matter hereof.
- (2) The payment and release obligations under section II shall apply to and by binding shall apply to and be binding upon GEW and its successors; and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (3) The effective date of this Agreement shall be the date of the last signatory.
- (4) 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.
- (5) 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.

- (6) 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.
- (7) 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.
- (8) 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).
- (9) 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.
- (10) 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.
- (11) 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 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 GEW allegedly sold, offered for sale, supplied, or offered for supply or transported CARBOB in California in violation of CaRFG regulation sections 2250-2273.5.

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 section 43031, subdivision (b).

In light of the facts to date, CARB considers GEW's alleged actions to fall under the strict liability provision of section 43027(c) of the California Health and Safety Code, for which the maximum per-unit penalty is \$35,000. CARB also considers GEW's alleged actions to fall under the strict liability provision of section 43027(d) of the California Health and Safety Code, for which the maximum per-unit penalty is \$25,000. For penalties prescribed in section 43027, "each day during any portion of which a violation occurs is a separate offense" under California Health and Safety code section 43030(a).

CARB assesses the alleged violations of CaRFG regulation section 2265(a)(2)(B) under California Health and Safety Code section 43027(d). The penalty obtained in this case for these alleged fourteen violations is \$12,500 per violation, totaling \$175,000.

CARB alleges that GEW sold, offered for sale, supplied, offered for supply, or transported California gasoline that exceeded the applicable cap limit for olefins in California in violation of CaRFG regulation section 2262.3(a) and further alleges that the California gasoline did not meet the threshold concentration for olefins, under the predictive model alternative gasoline formulation, which CARB alleges violated CaRFG regulation section 2265(b).

CARB also alleges that GEW offered for sale non-complying CARBOB for one day in ten separate compartments of its import vessel, the Muhut Silver, and for two days in four separate compartments of its import vessel, resulting in **eighteen alleged** violations under CaRFG regulation section 2262.3(a) and section 2265(b).

CARB also alleges that some of the fuel from the Muhut Silver was ultimately sold at retail. Because these retail sales originated with fuel from the fourteen compartments of GEW's import vessel, CARB has alleged that GEW is liable for **fourteen violations** under CaRFG regulation section 2268(a).

CARB assesses these violations of CaRFG regulation sections 2262.3(a) and 2268(a) under California Health and Safety Code section 43027(c). The penalty obtained in this case for these twenty-two alleged violations is \$17,500 per day per violation, totaling \$560,000.

In sum, the penalty obtained in this case totals \$735,000.

The lower penalty, from the strict liability maximum, reflects the consideration of a number of facts, including:

- This was an unintentional violation.

- GEW sampled the fuel at issue prior to its import into California, and had the fuel certified by a third-party independent laboratory, which certified that the olefin content for fuel in each of the fourteen compartments was below the cap limit allowed by the predictive model.
- GEW, after learning of the discrepancy between the results of the independent laboratory and CARB results, undertook an internal investigation, by engaging an expert consultant, to evaluate the sampling results and certification.
- GEW made efforts to and did comply fully with and cooperate with CARB during the investigation.

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.

California Health and Safety Code section 43029 specifies a penalty equal to "the product of the number of tons of incremental increased vehicular emissions resulting from the manufacture, distribution, and sale of the specified volume of noncompliant fuel and nine thousand one hundred dollars (\$9,100) per ton."

The provisions cited above do not prohibit emissions above a specified level. CARB alleges that since the fuel did not meet California air pollution standards, any emissions attributable to them are illegal. However, it is not practicable to quantify these emissions because the information necessary to do so is not available. CARB has taken this penalty provision into account in its determination of the total penalty amount.

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.

California Health and Safety Code section 43029 specifies a penalty equal to "the product of the number of tons of incremental increased vehicular emissions resulting from the manufacture, distribution, and sale of the specified volume of noncompliant fuel and nine thousand one hundred dollars (\$9,100) per ton."

CARB alleges that since the fuel did not meet California reformulated gasoline standards, any emissions attributable to them are alleged to be illegal. It is not practicable to quantify these emissions, however, because the information necessary to do so is not available. CARB has taken this

penalty provision into account in its determination of the total penalty amount.

- (2) GEW acknowledges that CARB has complied with Health and Safety Code section 39619.7 in prosecuting or settling this case. Specifically, CARB has considered all relevant facts, including those listed at Health and Safety Code section 43024 and 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 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.
- (4) CARB based the penalty in this case in part on confidential business information provided by GEW that CARB does not retain in the ordinary course of business. CARB also based the penalty in this case on confidential settlement communications between CARB and GEW 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 GEW, the desire to avoid the uncertainty, burden, and expense of litigation, to obtain swift compliance with the law and remove any unfair advantage that GEW may have secured from its actions.
- (5) CARB expressly reserves the right to bring an enforcement action based on violations of law not relating to any of the matters covered by this Agreement and to seek whatever fines, penalties, or remedies provided by law, including injunctive relief.
- (6) In the event CARB seeks a court order based on GEW'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 GEW 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.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Dated: 8/29/2018

By: 
(Signature)

Printed Name: Richard Corey

Title: Executive Officer

George E. Warren Corporation

Dated: 5/9/18

By: 
(Signature)

Printed Name: Darren Sylvia

Title: CFO