

This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB) 1001 I Street, Sacramento, California, and KERN OIL & REFINING CO. (the Company), 7724 East Panama Lane Bakersfield, California.

RECITALS

1. The Global Warming Solutions Act of 2006 authorized ARB to adopt regulations to reduce greenhouse gas emissions. (Health & Saf. Code, § 38500 et seq.) Pursuant to that authority, ARB adopted the Low Carbon Fuel Standard, California Code of Regulations (CCR), title 17, section 95480 et seq. (LCFS).
2. The LCFS is crucial to incentivizing innovative fuels that will reduce greenhouse gas (GHG) emissions. The regulation provides that low-carbon fuel producers and importers can generate credits by supplying transportation fuels with a carbon intensity below a stated standard. The regulation requires the fuel producer to report the volume of fuel as well as a fuel pathway code. Each fuel pathway has a specified carbon intensity that determines the number of credits or deficits a given volume of the fuel will generate once reported to ARB.
3. In 2013 through 2015, section 95486(a)(2)¹ of the LCFS provided that a producer could report fuel under a "Method 1" fuel pathway code on certain conditions, including:
 - A regulated party may use Method 1 to determine the carbon intensity of each fuel he or she sells in California if the Carbon Intensity Lookup Table contains fuel pathways that closely correspond to the regulated party's fuel pathways. A regulated party's pathway corresponds closely with a Lookup Table pathway when it is consistent with Lookup Table pathway in all the following areas:
 - (A) Feedstocks used to produce the fuel.
 - ...
 - (F) The CI of the regulated party's product must be lower than or equal to the Lookup Table pathway CI. If the Executive Officer determines that the regulated party's product has an actual CI that is likely to be higher than the Lookup Table pathway CI, the regulated party shall prepare a Method 2B application for a pathway-specific CI.
4. As alleged in Notice of Violation # F113016-KRN-RPT, during parts of 2013, 2014, and 2015 the Company reported producing certain volumes of fuel under fuel pathway code RNWD003. Although that pathway requires using a tallow feedstock, at times the Company used corn oil instead. The corn oil constituted a small fraction of the feedstock used, for example in 2015 corn oil constituted approximately 8% of the feedstock by volume.

¹ The cited provision in effect at the time refers to the LCFS as adopted November 26, 2012. All other regulatory citations are to the current regulation, effective January 1, 2016.

5. LCFS section 95491 requires quarterly and annual compliance reporting. LCFS section 95494 provides that each day that a required report remains unsubmitted, incomplete or inaccurate constitutes a separate violation.
6. California Health & Safety Code sections 38580 and 43027(d) provide that one who violates the LCFS by entering false information is strictly liable for daily penalties of up to \$25,000 per day.
7. To resolve these violations, the Company has taken, or agreed to take, the actions enumerated below. Further, ARB accepts this Agreement in termination and settlement of this matter.
8. In reaching this settlement, ARB considered a variety of circumstances, including the nature of the Company's business, the nature, magnitude, and duration of the violation, and any harm to the regulatory program. In this matter, there were a number of mitigating factors, including that this is the first time the Company violated the LCFS regulation, the Company did in fact produce a renewable fuel, the company has fully cooperated in ARB's investigation, and the Company has surrendered all credits generated by the fuel in question. At the time those credits were surrendered, their market value was approximately \$1,276,000.
9. 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, ARB and the Company agree as follows.

TERMS

10. Within 15 business days after ARB signs this Agreement, the Company shall deliver a cashier's check, money order or wire transfer in the sum of \$90,000 made payable to the "California Air Pollution Control Fund."

The check should note "LCFS Settlement" in the memo section. Once this Agreement has been fully executed, the Company shall send (1) one copy of this Agreement, (2) payment, and (3) the payment transmittal form (Attachment A) to:

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

and send a copy of the same documents to:

Rachel Connors
Air Resources Board
1001 "I" Street
Sacramento, CA 95812

11. It is further agreed that the penalties described in the prior paragraph are punitive in nature, rather than compensatory, and payable to a governmental unit. Therefore, it is agreed that these penalties arising from the facts described in recital paragraphs 1 – 7 are non-dischargeable under 11 United States Code § 523 (a)(7).

12. This Agreement shall apply to and be binding upon the Company, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

13. This Agreement constitutes the entire agreement and understanding between ARB and the Company concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements, whether made orally or in writing, between ARB and the Company concerning the subject matter hereof.

14. 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.

15. 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.

16. 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.

17. 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.

PENALTY BASIS

18. Health & Safety Code section 39619.7 requires ARB 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. ARB has considered all relevant facts, including those listed at Health & Safety Code section 43031, has explained the manner in which the penalty amount was calculated, and has identified the provision of law under which the penalty is being assessed. 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 penalties in this matter were determined based on all relevant circumstances, including the unique circumstances of this case. ARB considered the extent to which the violation deviated from LCFS requirements, the cause of the violation, and whether the violator gained in any way from the violation. Those circumstances were considered 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. The penalty

reflects \$10,000 for each erroneous quarterly report submitted to ARB. Penalties in future cases might be smaller or larger.

In this matter the penalty was discounted because the Company has no history of violating the LCFS, the Company did in fact produce a renewable fuel, the Company has fully cooperated in ARB's investigation, and the Company has surrendered all credits generated by the fuel in question. At the time those credits were surrendered their market value was approximately \$1,276,000.

The governing legal provisions. The penalty is based on Health & Safety Code section 43027 and CCR, title 17, section 95494, the provisions intended to govern violations of the LCFS.

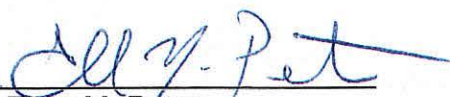
Whether the governing provisions prohibit emissions at a specified level. The provisions above do not prohibit emissions above a stated level, but Health & Safety Code section 38580(b)(2) specifies that violations of any LCFS under the Global Warming Solutions Act of 2006 shall be deemed to result in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

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

20. In consideration of the penalty payment specified herein, ARB hereby releases the Company and its successors and assignees, subsidiary and parent corporations from any claims the ARB may have based on the circumstances described in paragraph 4, above.

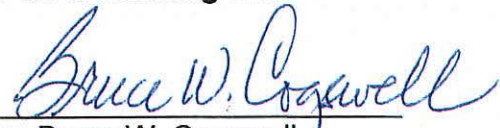
21. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: 
Ellen M. Peter
General Counsel

Date: 9/5/2017

Kern Oil & Refining Co.

By: 
Name: Bruce W. Cogswell
Title: Senior Vice President
Chief Operating Officer

Date: 8/7/17