

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 **Phillips 66 Company, (Phillips 66)**, with an office at 1660 West Anaheim Street, Wilmington, California 90740 (collectively, the Parties).

This agreement settles the following notices of violation:

1. (NOV) **F011812-PSXR-OLF**. This NOV was issued on **December 5, 2013**, for exceedance of the olefin value reported in the CARBOB Predictive Model notification.
2. (NOV) **F032514-PSXR-ARO**. This NOV was issued on **August 14, 2015**, for exceedance of the aromatic value reported in the CARBOB Predictive Model notification.
3. (NOV) **F110111-PSXR-RVP**. This NOV was issued on **December 5, 2013**, for violation of the lower limit of the Reid Vapor Pressure reported in the CARBOB Predictive Model notification.
4. (NOV) **F030415-PSXR-RPT**. This NOV was issued on **August 18, 2015**, for a violation of the California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model; last amended August 24, 2012.

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 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

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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) — In addition, where the producer or importer has elected to use the CARBOB model for a given final blend that is not being transferred from its production or import facility during the Reid Vapor control period for that facility set in section 2264.2(a), the final blend must have a Reid vapor pressure no lower than the value used in the T50 CARBOB model. (Cal. Code Regs., tit. 13, § 2266.5(a)(2)(B)1.)
- (7) For a final blend starting to be sold or supply from the production or import facility on or after October 9, 2012, the producer or importer shall evaluate the candidate PM alternative specifications for gasoline subject to the "California Procedures for Evaluating Alternative Specifications for Phase3 Reformulated Gasoline Using the California Predictive Model," last amended August 24, 2012. (Ca. Code Regs., tit 13, § 2265(a)(1)(2)(A)7).
- (8) "[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).
- (9) 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)."
- (10) 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."
- (11) 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

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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.”

- (12) CARB alleges in NOV **F011812-PSXR-OLF** that between January 14, 2011, to January 18, 2011, **Phillips 66** sold, offered for sale, supplied, offered for supply, and/or transported CARBOB that exceeded the olefin value reported in the CARBOB Predictive Model notification for a total of **five days**.
- (13) CARB alleges in NOV **F032514-PSXR-ARO** that between March 25, 2014, to March 26, 2011, **Phillips 66** sold, offered for sale, supplied, offered for supply, and/or transported CARBOB that exceeded the aromatic value reported in the CARBOB Predictive Model notification for a total of **two days**.
- (14) CARB alleges in NOV **F110111-PSXR-RVP** that on November 1, 2011, **Phillips 66** sold, offered for sale, supplied, and offered for supply, and/or transported CARBOB with a Reid Vapor Pressure (RVP) lower than the minimum value specified in the CARBOB Predictive Model notification for a total of **one day**.
- (15) CARB alleges in **F030415-PSXR-RPT** that on February 20, 2015, **Phillips 66** sold, offered for sale, supplied, and offered for supply, and/or transported CARBOB that failed to meet the criteria for approval in the California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model; last amended August 24, 2012 for a total of **one day**
- (16) CARB alleges that the sale, offer for sale, supply, offer for supply and/or transportation of non-complying CARBOB was unlawful and in violation of CaRFG regulation sections 2261, 2262, 2265, 2266.5, and 2268.
- (17) **Phillips 66** admits the facts or allegations as applicable, described in recital paragraphs (1) through (16), but denies any liability resulting from said allegations. **Phillips 66** has cooperated in CARB's investigation of the allegations described herein.
- (18) 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 alleged violations and voluntarily agree to resolve this matter by means of this Agreement. In order to resolve the violations described herein, **Phillips 66** has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Agreement in termination and settlement of this matter.

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II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against **Phillips 66** for the alleged violations referred to above, and in consideration of the terms set out below (and **PHILLIPS 66's** payment of the penalties and funding of Supplemental Environmental Project (SEP) set forth in Section 1 below), CARB and **Phillips 66** agree as follows:

- (1) **Phillips 66** has agreed to pay the sum of **one hundred twelve thousand and five hundred dollars (\$112,500.00)** as a penalty for (NOV) **F011812-PSXR-OLF**.
- (2) **Phillips 66** has agreed to pay the sum of **forty thousand dollars (\$40,000.00)** as a penalty for (NOV) **F032514-PSXR-ARO**.
- (3) **Phillips 66** has agreed to pay the sum of **twenty thousand dollars (\$20,000.00)** as a penalty for (NOV) **F110111-PSXR-RVP**.
- (4) **Phillips 66** has agreed to pay the sum of **seventeen thousand and five hundred dollars (\$17,500.00)** as a penalty for (NOV) **F030415-PSXR-RPT**.
- (5) **Phillips 66** has agreed to undertake a Supplemental Environmental Project (SEP) as described in *Attachment B – "Supplemental Environmental Project Agreement – FRESNO TREES SEP"*, to offset a portion of the penalty, consistent with CARB's SEP Policy.
- (6) **Phillips 66** shall pay a civil penalty and fund the SEP, described above, in the total amount of **\$190,000**. **Phillips 66** shall pay **\$115,000** to the **Air Pollution Control Fund** and the remaining **\$75,000** shall be paid to the **SEP**.
- (7) **Phillips 66** has agreed to make the payments of the SEP to **TREE FRESNO** and **SONOMA TECHNOLOGIES, INC.** Pursuant to this Agreement, **Phillips 66** shall make the payments according to the schedule below.

| Payment Due Date: | In the Amount of and Payable to: | |
|---|----------------------------------|----------------------------|
| 10 business days after Phillips 66 receives letter with 2 copies of SA for signature. | \$115,000 | AIR POLLUTION CONTROL FUND |
| 15 business days after Phillips 66 receives executed SA. | \$35,000 | TREE FRESNO |
| 15 business days after Phillips 66 receives executed SA. | \$40,000 | SONOMA TECHNOLOGY, INC. |

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For payment made to the **AIR POLLUTION CONTROL FUND**, the corresponding "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

For payment made to **TREE FRESNO**, the corresponding "Settlement Agreement Payment Transmittal Form" (Attachment A) shall be submitted to:

TREE FRESNO
For FRESNO TREES SEP
ATTN: Lee Ayres
3150 E. Barstow Ave.
Fresno, California 93740

For payment made to **SONOMA TECHNOLOGY, INC.**, the corresponding "Settlement Agreement Payment Transmittal Form" (Attachment A) shall be submitted to:

SONOMA TECHNOLOGY, INC.
For FRESNO TREES SEP
ATTN: Douglas Eisinger
1450 N. McDowell Blvd., Suite 200
Petaluma, California 94954

In addition, a copy of each payment check made to **TREE FRESNO** and **SONOMA TECHNOLOGY, INC.** shall be mailed to:

LUZ AMANDA CICCARELLI, APS
California Air Resources Board
Enforcement Division
8340 Ferguson Avenue
Sacramento, California 95828

- (8) **Phillips 66** has agreed that by funding the FRESNO TREES SEP, Phillips 66 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.
- (9) Upon agreeing to the terms set forth in the SEP Agreement, and funding the FRESNO TREES SEP, **Phillips 66** is released of all liabilities as they relate to the FRESNO TREES SEP as reflected in this underlying Settlement Agreement.

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- (10) 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), to be deposited into Air Pollution Control Fund. Accordingly, **Phillips 66** shall assign any and all rights against the SEP implementer to CARB.
- (11) In addition, if the Attorney General files a civil action to enforce this settlement agreement against Phillips 66, **Phillips 66** shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs. If and when the Attorney General is deemed to be a prevailing party by a court or competent jurisdiction.
- (12) **Phillips 66** has demonstrated to the satisfaction of CARB that the alleged violations have been corrected.
- (13) **Phillips 66** shall not violate any provision of the CaRFG regulation. Any future repeat violations may result in an increased penalty amount.
- (14) Now therefore, in consideration of the payment from **Phillips 66** to the Air Pollution Control Fund and the funding of the SEP set forth in section (6), CARB hereby releases **Phillips 66** and its principals, officers, agents, predecessors and successors from claims for violations of the CaRFG regulation alleged in paragraphs (1) through (16) of the Recitals.

III. GENERAL PROVISIONS

- (1) This Agreement constitutes the entire agreement and understanding between CARB and **Phillips 66** 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 **Phillips 66** concerning the subject matter hereof.
- (2) The payment obligation under section II(7) shall apply to and be binding upon Phillips 66, and the release obligations under section II(14) shall apply to and be binding upon **Phillips 66** 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.
- (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.

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- (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. 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.
- (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 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).

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The per unit penalty in the case of (NOV) **F011812-PSXR-OLF** is a maximum of \$35,000 per day per strict liability violation. CARB alleges that the non-complying CARBOB was sold, supplied and transported over a time period of **five days**. The penalty obtained in this case is **\$22,500.00 per day**. The lower penalty reflects the consideration of a number of facts, including: that this was an unintentional violation, **Phillips 66** did not have a similar olefin violation three years prior to the discovery of this violation, and **Phillips 66's** diligent efforts to comply and to cooperate with the investigation.

The per unit penalty in the case of (NOV) **F032514-PSXR-ARO** is a maximum of \$35,000 per day per strict liability violation. CARB alleges that the non-complying CARBOB was sold, supplied and transported over a time period of **two days**. The penalty obtained in this case is **\$20,000.00 per day**. The lower penalty reflects the consideration of a number of facts, including: that this was an unintentional violation, **Phillips 66** did not have a similar aromatic violation three years prior to the discovery of this violation, and **Phillips 66's** diligent efforts to comply and to cooperate with the investigation.

The per unit penalty in the case of (NOV) **F110111-PSXR-RVP** is a maximum of \$35,000 per day per strict liability violation. CARB alleges that the non-complying CARBOB was offered for supply over a time period of **one day**. The penalty obtained in this case is **\$20,000.00 per day**. The lower penalty reflects the consideration of a number of facts, including: that this was an unintentional violation, **Phillips 66** did not have a similar raid vapor pressure violation three years prior to the discovery of this violation, and **Phillips 66's** diligent efforts to comply and to cooperate with the investigation.

The per unit penalty in the case of (NOV) **F030415-PSXR-RPT** is a maximum of \$35,000 per day per strict liability violation. CARB alleges that the non-complying CARBOB was sold, supplied and transported over a time period of **one day**. The penalty obtained in this case is **\$17,500.00 per day**. The lower penalty reflects the consideration of a number of facts, including: that this was an unintentional violation, **Phillips 66** did not have a similar reporting violation three years prior to the discovery of this violation, and **Phillips 66's** diligent 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

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Phillips 66 allegedly sold, offered for sale, supplied, or offered for supply and/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 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.

- (2) **Phillips 66** 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 **Phillips 66** 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 **Phillips 66** 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 **Phillips 66**, the desire to avoid the uncertainty, burden and expense of litigation, to obtain swift compliance with the law and remove any unfair advantage that **Phillips 66** may have secured from its actions.

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V. STIPULATED CONSENT JUDGMENT

- (1) The Parties stipulate to the entry of a Consent Judgment if **Phillips 66** defaults on any of the terms and conditions of this Agreement and hereby waives the right to challenge the Consent Judgment or its terms. Before declaring a default of the terms and conditions of this Agreement, CARB will first provide **Phillips 66** 10 calendar days written notice of the claimed default and request to cure.
- (2) The Consent Judgment does not constitute evidence of an admission by **Phillips 66** regarding any issue of law or fact alleged in the Agreement but sets forth the obligations of **Phillips 66** and constitutes the complete, final, and exclusive agreement between CARB and **Phillips 66**.
- (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 Consent Judgment based on **Phillips 66'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 **Phillips 66** 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

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ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Dated: 12/13/2017

By: 
(Signature)

Printed Name: Mr. Richard W. Corey

Title: Executive Officer

Phillips 66, Company

Dated: 11/14/17

By: 
(Signature)

Printed Name: MICHAEL J. BODZIAK

Title: BUSINESS OPTIMIZATION MANAGER