

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 **Shell Pipeline Company LP (Shell)** with its principal place of business at 150 N. Dairy Ashford Street, Houston, Texas 77079, United States of America (collectively, the Parties).

This agreement settles Notice of Violation (NOV) **F071617-RDSA-OLE**. CARB issued this NOV to **Shell** on **November 27, 2017**, for supplying and blending CARBOB that exceeded the allowable limit of Total Olefins under the California Reformulated Gasoline cap limit.

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. (CaRFG regulation § 2261).
- (4) 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). The term "California gasoline," as used in this Agreement, means California gasoline or CARBOB. (CaRFG regulation § 2266.5).
- (5) CaRFG regulation section 2262.3(a) (Compliance with cap limits) provides in pertinent 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".
- (6) CaRFG regulation section 2266.5(f) (Restrictions on blending CARBOB with other materials) provides in pertinent part as follows: "(1) *Basic prohibition*. No person may combine any CARBOB that has been supplied from the facility at which it was produced or imported with any material except [as specified]"
- (7) "[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).

- (8) 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)."
- (9) 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."
- (10) Health and Safety Code section 43031, 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."
- (11) This matter involves the shipment of non-certified blendstock component material aboard the *Muhut Silver*, which arrived at the Port of Los Angeles on July 15, 2017. CARB alleges that starting on or after July 15, 2017, **Shell** sold, offered for sale, supplied, or transported California gasoline containing non-certified gasoline component material imported from the *Muhut Silver* for **one day** in **three** separate fuel tanks.
- (12) CARB alleges that on or after July 15, 2017, **Shell** blended, for **one day**, California Reformulated Blendstock for Oxygenate Blending (CARBOB) with non-certified blendstock component material in **five** separate storage tanks, and caused, for **one day**, the blending of California Reformulated Blendstock for Oxygenate Blending (CARBOB) with non-certified blendstock component material in **two** storage tanks.
- (13) CARB alleges that on or after July 15, 2017, **Shell** caused or allowed California gasoline containing non-certified gasoline component material to be sold at retail.
- (14) CARB alleges that the sale (including sale at retail), offer for sale, supply, blending, or transportation of non-complying CARBOB was unlawful and in violation of CaRFG

regulation sections 2261, 2262, 2265, 2266.5, and 2268.

- (15) Shell has cooperated in CARB's investigation of the allegations described herein. This Agreement shall not in any way be construed as an admission by Shell of any liability or any act of wrongdoing whatsoever.
- (16) 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 alleged violations described herein, **Shell** has taken, or agrees to take, the actions enumerated below in Section II of this Agreement. Further, CARB accepts this Agreement in termination and settlement of this matter.

II. TERMS AND RELEASE

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

- (1) **Shell** has agreed to pay the sum of **three hundred thousand dollars (\$300,000.00)** as a civil penalty for the alleged violations in (NOV) F071617-RDSA-OLE.
- (2) **Shell** has agreed to undertake the following Supplemental Environmental Projects (SEPs) as described in Attachments B and C to offset a portion of the penalty, consistent with CARB's SEP Policy:
1. Asthma Impact Model—Kern County, and
 2. ID Diesel Hotspots in LA Unified School District & Posting Signs.
- (3) **Shell** shall pay the civil penalty and fund the SEPs described above, in the total amount of **\$300,000**. **Shell** shall pay **\$150,000.00** to the Air Pollution Control Fund (APCF) and the remaining **\$150,000.00** to the SEPs distributed as described below:
- **\$113,480.00** payable to the Central California Asthma Collaborative for the SEP titled Asthma Impact Model—Kern.
 - **\$36,520.00** payable to California Safe Schools for the SEP titled ID Diesel Hotspots in LA Unified School District & Posting Signs.
- (4) **Shell** will send the California APCF payment, along with the attached Settlement Agreement Payment Transmittal Form (Attachment A-1) 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 and C-2) to the SEP addresses listed in Attachments B and C, 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
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) **Shell** shall mail the payments **no later than ten business days** after both parties sign this Agreement.
- (7) **Shell** has agreed that by funding the SEP's listed above, Shell 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's Agreements, and funding the SEPs, **Shell** is released of all liabilities as they relate to the SEP's as reflected in this underlying Agreement.
- (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 APCF. Accordingly, **Shell** 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 Agreement against **Shell**, **Shell** shall pay all reasonable costs of investigating and prosecuting the action, including reasonable expert fees, 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) **Shell** has demonstrated to the satisfaction of CARB that it has corrected the alleged violations described herein.

- (12) **Shell** shall not violate any provision of the CaRFG regulation. Any future violations may result in an increased penalty amount.
- (13) Effect of Un timely Payment. If any payment is more than fifteen (15) days late, the entire remaining balance becomes immediately due and payable.
- (14) Now therefore, in consideration of the payment from **Shell** to the APCF and the funding of the SEP set forth in section (3) of this Article II, CARB, for itself and its successors and assigns, hereby releases **Shell** and its affiliates and their respective principals, employees, officers, directors, agents, predecessors and successors from any and all claims, liabilities and causes of action 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 **Shell** 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 **Shell** concerning the subject matter hereof.
- (2) The payment obligation under Article II shall apply to and be binding upon **Shell** and its officers, directors, receivers, trustees, employees, successors and assignees, members, parent corporations, and subsidiaries, if any; and the release obligations under Article II shall apply to and be binding 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.
- (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 Agreement and summarized below.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

Shell allegedly sold, offered for sale, supplied, offered for supply, or transported California gasoline that exceeds the applicable cap limit or predictive model limit for olefins in CaRFG regulation section 2262.3(a).

Shell allegedly combined CARBOB with non-CARBOB material, namely non-certified blendstock component material that exceeded the applicable cap limit or predictive model limit for olefins, in California in violation CaRFG regulation section 2266.5(f).

Shell allegedly caused or allowed California gasoline containing non-certified gasoline component material to be sold at retail in California, in violation of CaRFG regulation section 2268(a).

CARB is assessing the penalty for these violations under California Health and Safety Code section 43027 because that section assesses civil penalties for violations of "any rule . . . of the state board, pertaining to fuel requirements and standards," including violations of CaRFG regulation section 2262.3(a). CARB is also assessing the penalty for these violations under California Health and Safety Code section 43029 because that section requires CARB to assess "an additional penalty designed to eliminate the economic benefits from noncompliance against any person who violates any provision of this part, or any rule . . . of the state board pertaining to fuel requirements or standards."

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.

In light of the facts to date, CARB considers Shell's alleged unlawful actions to fall under the strict liability provision of section 43027 of the California Health and Safety Code. The maximum per unit penalty per strict liability violation is \$35,000. 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 alleges that Shell offered for sale non-complying CARBOB for **one day** in **three** separate tanks, resulting in **three** violations under CaRFG regulation section 2262.3(a). CARB also alleges that Shell blended, or caused to be blended, non-complying CARBOB with CARBOB for **one day** in **seven** separate storage tanks, resulting in **seven violations** under CaRFG regulation section 2266.5(f). CARB also alleges that Shell allowed non-complying CARBOB to be sold at retail. Because these retail sales originated with fuel from **five** of Shell's holding tanks, CARB has alleged that Shell is liable for **five violations** under CaRFG regulation section 2268(a). In total, this amounts to **fifteen violations**.

The penalty obtained in this case is **\$20,000 per day per violation**, totaling **\$300,000**.

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

- This was an unintentional violation.
- **Shell** made diligent efforts to comply and to cooperate with 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."

CARB alleges that since the fuel did not meet California air pollution standards,

any emissions attributable to them are illegal.

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 considered this penalty provision in its determination of the total penalty amount.

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


V. STIPULATED CONSENT JUDGMENT

- (1) The Parties stipulate to the entry of a Consent Judgment if **Shell** 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 **Shell** written notice of the claimed default and request to cure.
- (2) The Consent Judgment does not constitute evidence of an admission by **Shell** regarding any issue of law or fact alleged in the Agreement but sets forth the obligations of **Shell** and constitutes the complete, final, and exclusive agreement between CARB and **Shell**.

- (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 **Shell'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 **Shell** 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: 3/29/2018 By: 
(Signature)

Printed Name: Richard Corey
Title: Executive Officer

Shell Pipeline Company LP

Dated: 6/18/18 By: 
(Signature)

Printed Name: Darin Bratsman
Title: Dist Ops Manager