

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is entered into between the State of California Air Resources Board (ARB) with the principal location at 1001 I Street, Sacramento, California 95814; and **Tesoro Companies, Inc. (Tesoro)**, with its principal place of business at 2350 E. 223rd Street, Carson, California 90810 (collectively, the Parties).

This agreement settles notice of violation (NOV) **F081913-TSOT-CON**. This NOV was issued on **August 1, 2016**, for the combining of non-certified gasoline component material with CARBOB.

I. RECITALS

- (1) California Health and Safety Code section 39003 assigns ARB with attaining and maintaining air quality standards.
- (2) California Code of Regulations, title 13, 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, or offer for sale, gasoline for motor vehicles in the State of California. (Cal. Code Regs., tit. 13, § 2261).
- (4) California Code of Regulations, title 13, 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 ...”
- (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) “[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).

- (7) 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)."
- (8) 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."
- (9) In 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. (Health & Saf. Code 43031; See also Health & Saf. Code § 43024.)
- (10) ARB alleges in NOV F081913-TSOT-CON that between August 16, 2013, and August 19, 2013, **Tesoro** sold, offered for sale, supplied, or transported California gasoline containing non-certified gasoline component material for a total of **four days**.
- (11) ARB alleges that the sale, offer for sale, supply, and/or transportation of non-complying CARBOB was unlawful and in violation of CaRFG regulation sections 2261, 2266.5, and 2268.
- (12) **Tesoro** denies the allegations in the foregoing recital paragraphs and any liability resulting from said allegations. **Tesoro** has cooperated in ARB's investigation of the allegations described herein.
- (13) 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, **Tesoro** has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, ARB accepts this Agreement in termination and settlement of this matter.

II. TERMS AND RELEASE

In consideration of ARB not filing a legal action against **Tesoro** for the alleged violations referred to above, and in consideration of the terms set out below, ARB and **Tesoro** agree as follows:

- (1) The Parties shall exchange signed copies of this Agreement by no later than 15 calendar days after receipt of this Agreement. This Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement. **Tesoro** shall send the original signed Agreement and any future mailings or documents required per the terms of this Agreement to:

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

- (2) **Tesoro** shall pay the sum of **seventy-five thousand dollars (\$75,000.00)** as a penalty no later than thirty (30) calendar days after the execution of this Agreement. Payment shall be made as described below:

- **\$37,500.00** payable to the California Air Pollution Control Fund and,
- **\$37,500.00** payable to the South Coast Air Quality Management

Tesoro will send the California Air Pollution Control Fund 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

Tesoro has agreed to undertake a Supplemental Environmental Project (SEP), which ARB has agreed to offset a portion of the penalty for SEP implementation. Pursuant to this Agreement, **Tesoro** shall, no later than thirty (30) calendar days after this Agreement is fully executed, send a check in the amount of **\$37,500.00** to South Coast Air Quality Management District to the following address:

South Coast Air Quality Management District
ATTN: Ms. Patricia Kwon
21865 Copley Drive
Diamond Bar, California 91765

Also no later than thirty (30) calendar days after this Agreement is fully executed, Tesoro shall send ARB a copy of the payment check to South Coast Air Quality Management District to the address listed in II(2).

- (3) **Tesoro** has agreed that by funding the **Installation of Air Filtration Systems in Schools SEP**, they 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.
- (4) Upon agreeing to the terms set forth in the SEP Agreement, and funding the **Installation of Air Filtration Systems in Schools SEP**, **Tesoro** is released of all liabilities as they relate to the **Installation of Air Filtration Systems in Schools SEP** as reflected in this underlying Settlement Agreement.
- (5) **Tesoro** has demonstrated to the satisfaction of ARB that the alleged violations described herein have been corrected.
- (6) **Tesoro** shall not violate any provision of the CaRFG regulation. Any future repeat violations may result in an increased penalty amount.
- (7) Now therefore, in consideration of the payment from **Tesoro** to the Air Pollution Control Fund and the South Coast Air Quality Management District, ARB hereby releases **Tesoro**, its parent, and its parent subsidiaries, and their principals, officers, agents, predecessors and successors from claims for violations of the CaRFG regulation alleged in paragraphs (1) through (11) of the Recitals.

III. GENERAL PROVISIONS

- (1) This Agreement constitutes the entire agreement and understanding between ARB and **Tesoro** 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 ARB and **Tesoro** concerning the subject matter hereof.
- (2) The payment obligation under section II(2) and the release obligations under section II(5) shall apply to and be binding upon **Tesoro** and its officers, directors, receivers, trustees, employees, successors and assignees, members, parent corporations, and subsidiaries, if any; and upon ARB 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 upon which **Tesoro** executes this Agreement.
- (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, ARB 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 sections 43024 and 43031.

The per unit penalty in this case is a maximum of \$35,000 per day per strict liability violation. ARB alleges that the non-complying CARBOB was supplied over a time period of **four days**. The penalty obtained in this case is **\$18,750.00 per day**. The lower penalty reflects the consideration of a number of facts, including: that this was an unintentional violation and Tesoro'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.

ARB alleges that the penalty provisions being applied in this case, Health and Safety Code sections 43027 and 43030 are appropriate because Tesoro allegedly sold, offered for sale, supplied, or offered for supply and/or transported CARBOB in California in violation of California Code of Regulations, title 13, sections 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. ARB 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) Tesoro acknowledges that ARB has complied with Health and Safety Code section 39619.7 in prosecuting or settling this case. Specifically, ARB 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) The penalty in this case was based in part on confidential business information provided by **Tesoro** that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and **Tesoro** that ARB does not retain in the ordinary course of business. The penalty also reflects ARB's assessment of the relative strength of its case against **Tesoro**, the desire to avoid the uncertainty, burden and expense of litigation, to obtain swift compliance with the law and remove any unfair advantage that **Tesoro** may have secured from its actions.

V. STIPULATED CONSENT JUDGMENT

- (1) The Parties stipulate to the entry of a Consent Judgment if **Tesoro** 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, ARB will first provide **Tesoro** 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 **Tesoro** regarding any issue of law or fact alleged in the Agreement but sets forth the obligations of **Tesoro** and constitutes the complete, final, and exclusive agreement between ARB and **Tesoro**.
- (3) ARB 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 ARB seeks Consent Judgment based on **Tesoro'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 **Tesoro** 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: 12/21/2017 By: 
(Signature)

Printed Name: Ellen M. Peter

Title: Chief Counsel

Tesoro Companies, Inc.

Dated: 12-5-17 By: 
(Signature)

Printed Name: JOHN ROARK

Title: VP, TT&S