

This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB) 1001 I Street, Sacramento, California 95814, and LHOIST NORTH AMERICA OF ARIZONA, INC. (LHOIST), 15333 N. Pima Road, Suite 200, Scottsdale, Arizona 85260.

## RECITALS

1. The Global Warming Solutions Act of 2006 authorized ARB to adopt regulations requiring the reporting and verification of greenhouse gas emissions. (Health & Saf. Code §38530.) Pursuant to that authority, ARB adopted the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR), title 17, California Code of Regulations (CCR), §95100 et seq.
2. The MRR is crucial to the development of the greenhouse gas (GHG) inventory, and supports other regulatory programs, including the cap on GHG emissions established by title 17 CCR §95801 et seq., known as the Cap-and-Trade Regulation. The MRR requires most reporting entities to submit, by April 10 of each year, an emissions data report containing emissions and product data that is certified to be complete and accurate within stated standards. (17 CCR §95103.) The April 10 deadline is intended to precede other regulatory events later in the year, such as verification under the MRR, and the distribution of allowances and surrender of compliance instruments under the Cap-and-Trade Regulation.
3. Where a report required under the MRR is late or does not meet the regulation's standards for accuracy, completeness, or third-party verification, the MRR provides that each day a report remains unsubmitted, incomplete or inaccurate constitutes a separate violation. (17 CCR §95107.)
4. California Health & Safety Code sections 38580 and 42402 provide that one who violates the MRR or related regulations is strictly liable for a penalty of up to \$10,000 for each violation.
5. ARB contends that for the reporting period 2011 LHOIST failed to comply with the MRR by using inaccurate data to compute the emissions from its Salinas plant (ARB ID #104052). Uncorrected errors in the emissions report resulted in an adverse verification finding. As a result, ARB was obligated to conduct its own review and to assign an emissions level for the facility.
6. In reaching this settlement, ARB considered a variety of circumstances, including the size and complexity of the violator's operations, the nature, magnitude, and duration of the violation, any harm to the environment or the regulatory program, efforts the violator took to prevent the violation and to correct it, and the financial burden to the violator.
7. In this matter, there were a number of mitigating factors, including that this is the first time ARB has noted the company as being in violation, the errors in the emissions report were promptly corrected, on the whole reported emissions were overstated, but were within 1% of emissions assigned by ARB, the company's explanation indicates an innocent error, the company cooperated with ARB and the verifier to correct the report,

and the company has agreed to submit an updated GHG monitoring plan to ARB to demonstrate that reporting will be accurate in future reporting years.

8. In order to resolve these alleged violations, LHOIST has taken, or agreed to take, the actions enumerated below. Further, ARB accepts this Agreement in termination and settlement of this matter.

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 LHOIST agree as follows.

### TERMS

10. Within 15 business days following execution of this agreement, LHOIST shall deliver the sum of \$10,000.00 made payable to the "State of California."

The check should note "LHOIST 2011 MRR settlement" in the memo section. Please submit the signed settlement agreement and check to:

Mr. Will Brieger  
Air Resources Board, Office of Legal Affairs  
P.O. Box 2815  
Sacramento, CA 95812

11. It is further agreed that the penalties described in the prior paragraph are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish LHOIST for violations of the MRR, and these penalties are payable to a governmental unit. Therefore, it is agreed that these penalties imposed on LHOIST by ARB arising from the facts described in recital paragraphs 1 – 9 are non-dischargeable under 11 United States Code § 523 (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty or forfeiture payable to and for benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

12. LHOIST shall not violate the MRR, title 17 CCR section 95100 *et seq.*

13. Within 60 days of executing this Agreement, LHOIST shall submit to ARB an updated Greenhouse Gas Monitoring Plan for its Salinas facility that meets the requirements of 17 CCR section 95105(c), and that addresses any omissions and errors in the gathering and reporting of information identified by a verifier or ARB in connection with reporting emissions from the year 2011.

14. This Agreement shall apply to and be binding upon LHOIST, 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.

15. This Agreement constitutes the entire agreement and understanding between ARB and LHOIST concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and LHOIST concerning the subject matter hereof.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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. LHOIST acknowledges that ARB has complied with section 39619.7 in investigating, prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health & Safety Code section 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed, which provision does not prohibit the emission of pollutants at a specified level. That information, some of which is also elsewhere in this settlement agreement, is summarized here.

**The manner in which the penalty was determined.** 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, giving consideration to the eight factors specified in Health & Safety Code section 42403. Consideration was given to the reporting entity's size and complexity, the extent to which the monitoring and reporting deviated from MRR requirements, the cause of any errors and omissions, the magnitude of any errors, and whether emissions were over reported or under reported. 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. Penalties in future cases might be smaller or larger.

In this matter the penalty was discounted based on the fact that the violation was the first time ARB has noted the company as being in violation, reported emissions were overstated, but were within 1% of emissions assigned by ARB, the company's explanation indicates an innocent error, the company has agreed to submit an updated

GHG monitoring plan, and the company made diligent efforts to cooperate with ARB's investigation.

**The legal provisions under which the penalty was assessed.** The penalty is based on Health & Safety Code section 42402 and title 17 CCR section 95107, the provisions intended to govern MRR violations.

**Whether the governing provisions prohibit emissions at a specified level.** The MRR does not prohibit emissions above a stated level. Instead the MRR requires timely, accurate reporting of emissions.

21. The penalty was based on confidential settlement communications between ARB and LHOIST. The penalty is the product of an arms length negotiation between ARB and LHOIST and reflects ARB's assessment of the relative strength of its case against LHOIST, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that LHOIST may have secured from its actions. By entering into this agreement, Lhoist does not admit liability as to any of the allegation made by the ARB herein.

22. In consideration of the penalty payment and undertaking in paragraph 13, above, ARB hereby releases LHOIST and its principals, officers, agents, predecessors and successors from any claims the ARB may have based on the circumstances described in paragraph 5, above.


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

**California Air Resources Board**

By:   
Ellen M. Peter  
Chief Counsel

Date: 4/12/2013

**Lhoist North America or Arizona, Inc.**

By:   
Name: ROBERT C. RANDALL  
Title: PLANT MANAGER

Date: 4/9/13