

ARB AND TESORO

This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB) and TESORO REFINING & MARKETING COMPANY LLC (Tesoro), 19100 Ridgewood Parkway, San Antonio, TX 78259-1828.

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), California Code of Regulations (CCR), title 17, §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 CCR, title 17, §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. (CCR, tit. 17, §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. Also pursuant to the Global Warming Solutions Act of 2006, ARB is authorized to adopt a schedule of fees to be paid by sources of GHG emissions. (Health & Saf. Code §38597.) These fees are used to fund costs directly related to state agencies' development, administration, and implementation of AB 32 programs that reduce GHG emissions. Accordingly, ARB adopted the AB 32 Cost of Implementation Fee Regulation (Fee Regulation), CCR, title 17, §95201 et seq.
4. Where a report required under the MRR or Fee Regulation is late or does not meet the regulation's standards for accuracy or completeness, the MRR and Fee Regulation provide that each day a report remains unsubmitted, incomplete or inaccurate constitutes a separate violation. (CCR, tit. 17, §§95107, 95206.)
5. California Health & Safety Code sections 38580 and 42402 provide that one who violates the MRR or Fee Regulation is strictly liable for a penalty of up to \$10,000 for each violation.
6. ARB contends that for 2013 Tesoro failed to comply with the MRR by inaccurately reporting emissions from its Sulphur recovery plant (ARB ID#101492). Errors in the emissions report and failures to make certain measurements to the required accuracy resulted in Tesoro over-reporting emissions in the 2013 report for the Sulphur recovery plant, which required that the 2013 report be set aside, corrected and then verified by a different verification body. For the reporting period 2013, similar errors resulted in Tesoro reporting emissions inaccurately for its Wilmington refinery (ARB ID# 100335) as well, although those errors did not result in an adverse verification or a set-aside.
7. For the reporting period 2014, in connection with the Fee Regulation, Tesoro

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reported emissions inaccurately for its Carson operations (ARB ID# 101246) and Martinez refinery (ARB ID# 101331); those errors did not result in an adverse verification or a set-aside and have since been corrected.

8. In reaching this settlement, ARB considered a variety of circumstances, including whether the company self-reported the violation, 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.

9. 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 company found many of these errors, brought them to ARB's attention, and promptly corrected them. The company's explanation indicates an innocent error, and the company has submitted an updated GHG monitoring plan to ARB to demonstrate that reporting will be accurate in future reporting years.

10. To resolve these alleged violations, Tesoro has taken, or agreed to take, the actions enumerated below. ARB accepts this Agreement in termination and settlement of this matter.

11. 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 Tesoro agree as follows.

TERMS

12. Within 30 business days following execution by all parties of this Agreement, Tesoro shall deliver a cashier's check or money order in the sum of \$509,600.00 made payable to the "Air Pollution Control Fund."

The check should note "Tesoro 2013 MRR Settlement" in the memo section. Tesoro shall send (1) the signed settlement agreement, (2) check, 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 settlement agreement and copy of the check to: William

Brieger
Air Resources Board
P.O. Box 2815
Sacramento, CA 95812-2815

13. It is further agreed that the penalties described in the prior paragraph are non-dischargeable under 11 United States Code §523(a)(7).

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14. Tesoro shall not violate the MRR or Fee Regulation.

15. This Agreement shall apply to and be binding upon Tesoro, and any receivers, trustees, 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.~~

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

17. 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.

18. 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.

19. 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.

20. 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.

The Penalty's Basis

21. 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 factors, 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, 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 circumstances of this case, and the eight factors specified in Health & Safety Code section 42403. ARB considered the reporting entity's size and complexity, the extent to which the monitoring and reporting deviated from MRR and Fee Regulation requirements, the cause of any errors and omissions, and the magnitude of any errors. 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.

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In this matter the penalty equates to \$800 for each day that the MRR report was inaccurate, and \$600 for each day that the data reported under Fee Regulation was inaccurate. The penalty was discounted based on the fact that the violation was a first time violation, and the company made diligent efforts to comply and to cooperate with ARB's investigation.

The legal provisions under which the penalty was assessed and why those provisions are appropriate. The penalty is based on Health & Safety Code section 42402 and CCR, title 17, sections 95107 and 95206, the provisions intended to govern MRR and Fee Regulation violations.

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

22. The penalty was based on confidential settlement communications between ARB and Tesoro. 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, to obtain swift compliance with the law and to remove any unfair advantage that the company may have secured from its actions.

23. In consideration of the penalty payment and undertaking in paragraph 15, above, ARB hereby releases Tesoro and its receivers, trustees, successors and assignees, subsidiary and parent corporations from any claims the ARB may have based on the circumstances described in paragraphs 6 and 7, above.

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

California Air Resources Board

Tesoro Refining & Marketing
Company LLC

By: _____

Richard Corey
Executive Officer

By: _____

David Foster
VP Los Angeles Refinery

SKV

Date: _____

12/21/2011

Date: _____

December 19, 2016