

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB) with its principal office at 1001 I Street, Sacramento, California 95814, and SHELL OIL PRODUCTS US with its principal place of business at 20945 S. Wilmington Avenue, Carson, California 90810.

I. RECITALS

- (1) California Code of Regulations (CCR), Title 13, Section 2265(b)(1) states, "No producer or importer shall sell, offer for sale, supply, or offer for supply from its production or import facility California gasoline which is reported pursuant to section 2265(a) as a PM alternative gasoline formulation subject to PM alternative specifications if any of the following occur:
... (C) The gasoline fails to conform with any PM flat limit in the identified PM alternative specifications ...
- (2) California Health and Safety Code (H&SC) section 43027 states, "(a) Any person who willfully and intentionally violates any provision of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, is liable for a civil penalty of not more than two hundred fifty thousand dollars (\$250,000), and the prosecuting agency shall include a claim for an additional penalty in the amount of any economic gain that otherwise would not have been realized from the sale of the fuel determined to be in noncompliance.

"(b) Any person who negligently 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 liable for a civil penalty of not more than fifty thousand dollars (\$50,000).

"(c) Any 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).
- (3) In Notice of Violation F10-3-4, issued on March 23, 2010, ARB alleged that on January 29, 2009 Shell's terminal imported a ship full of gasoline for which the predictive model specified maximum values for T50 and T90 were exceeded.

- (4) ARB alleges that the sale, offer for sale, supply, or offer for supply of PM alternative gasoline that fails to conform with any PM flat limit in its alternative was unlawful and in violation of CCR, Title 13, Section 226(b)(1).
- (5) ARB alleges that if the facts described in recital paragraphs 1-4 were proven, civil penalties could be imposed against Shell as provided in H&SC section 43027.
- (6) Shell is entering into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. Further, ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

II. TERMS AND RELEASE

In consideration of ARB not filing a legal action against Shell for the violation referred to above, ARB and Shell agree as follows:

- (1) Upon execution of this Agreement, Shell shall pay the sum of fifteen thousand dollars (\$15,000.00) to the California Air Pollution Control Fund. Payment shall be made by check payable to the California Air Pollution Control Fund and addressed to:

Raak Veblen
Enforcement Division
Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

- (2) This Agreement shall apply to and be binding upon Shell and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon the ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (3) ~~Place holder for paragraph regarding consequences of a future similar violation.~~ *OK*
- (4) Now therefore, in consideration of the payment of Shell to the California Air Pollution Control Fund, ARB hereby releases Shell and its principals, officers, directors, agents, subsidiaries, predecessors, and successors from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs 1-4. The undersigned represent that they have the authority to enter this Agreement.


- (5) This Agreement constitutes the entire agreement and understanding between the ARB and Shell concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between the ARB and Shell concerning these claims.
- (6) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
- (7) 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date(s) set forth below.

SHELL:


SHELL OIL PRODUCTS US


Dated: 12/17/, 2010

By: 
Name: Don R. Herman
Its: Area Manager

ARB:

CALIFORNIA AIR RESOURCES BOARD

Dated: 1/12/11, 2010 

By: 
Name: Jim Ryden, Chief
Its: Enforcement Division