

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Arkalon Ethanol, LLC (Arkalon), with its principal location at 1701 N. Kansas Avenue, Liberal, Kansas 67901 (collectively, the "Parties," or individually, "Party").

### **LEGAL BACKGROUND**

- (1) Purpose. The Global Warming Solutions Act of 2006 mandates CARB to adopt regulations to reduce greenhouse gas emissions and to enforce those regulations. (Health & Saf. Code §§ 38560, 38562, and 38580.)
- (2) Regulation. CARB adopted the *Low Carbon Fuel Standard* (LCFS Regulation) to incentivize innovative fuels that will reduce greenhouse gas emissions. (Cal. Code Regs., tit. 17, § 95480 et seq.)
- (3) Regulatory Provisions. Fuel pathway holders are defined as fuel pathway applicants that have received a certified fuel pathway carbon intensity based on site-specific data, including a provisional fuel pathway. Fuel pathway holders producing, selling, supplying or offering for sale transportation fuel into the State of California must submit an annual Fuel Pathway Report to CARB, which includes the fuel's carbon intensity, which must not exceed its certified carbon intensity. (Cal. Code Regs., tit. 17, §§ 95480-95503.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to thirty-five thousand dollars (\$35,000.00 USD) for strict liability violations; twenty-five thousand dollars (\$25,000.00 USD) for entering false information, failing to keep any document, respectively, for each day in which the violation occurs; and \$1,000.00 per deficit. (Cal. Code Regs., tit. 17, § 95494; Health & Saf. Code §§ 38580, 42400 et seq., 42402 et seq., 43027, and 42410.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, Arkalon was organized under the laws of Kansas as a limited liability company.
- (6) Allegations. CARB alleges that at all relevant times, Arkalon was a fuel pathway holder as defined by the LCFS Regulation for the Reporting Year 2020. CARB also alleges that at 8664 Road P, Liberal, Kansas 67901, Arkalon produced, sold, supplied, or offered for sale, transportation fuel ethanol into the State of California and failed to maintain its verified operational carbon intensity below its certified carbon intensity, which did not conform to the requirements of the LCFS Regulation as outlined in the Notice of Violation F040121-AEL-CI. (Cal.

Code Regs., tit. 17, § 95480 et seq.) CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against Arkalon for each and every day.

- (7) Acknowledgment. Arkalon admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) Consideration. 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 Settlement Agreement. In order to resolve the violations described herein, Arkalon has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

### **TERMS AND CONDITIONS**

In consideration of CARB not filing a legal action against Arkalon for the alleged violations referred to above in the Legal Background and Case Background, and Arkalon's agreement to complete all terms and conditions set forth below, CARB and Arkalon agree as follows:

- (9) Settlement Amount. Arkalon shall pay a civil penalty of fifty thousand dollars (\$50,000.00 USD). Arkalon shall make all payments in full within thirty (30) calendar days of the Notification Date.
- (10) Notification Date. The date upon which CARB notifies Arkalon according to Paragraph 13 (Notices), that the Settlement Agreement is fully executed or when CARB sends the fully executed Settlement Agreement to Arkalon.
- (11) Civil Penalty Payment Method. Arkalon shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to the "California Air Resources Board," using instructions provided separately by CARB in a Payment Transmittal Form. Arkalon is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to Arkalon in accordance with Paragraph 13 (Notices).
- (12) Documents. Arkalon shall promptly email or mail the signed and dated Settlement Agreement, to the CARB address or email listed in Paragraph 13 (Notices).

- (13) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board  
Enforcement Division / Settlement Agreements  
Field Operations Branch / Fuels Enforcement Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to Arkalon:

Arkalon Ethanol, LLC  
1701 N. Kansas Avenue  
Liberal, Kansas 67901  
Tom.willis@conestogaenergy.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (14) Repeat Violations. Arkalon agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (15) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 7 pages and 33 numbered paragraphs.
- (16) Binding Effect. This Settlement Agreement binds Arkalon, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (17) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (18) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.

- (19) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (20) Choice of Law. This Settlement 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.
- (21) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 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 the benefit of a governmental unit.
- (22) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (23) Non-Waiver. The failure to enforce any provision of this Settlement 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 Settlement 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 Settlement Agreement or otherwise provided by law.
- (24) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (25) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (26) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.

- (27) Release. In consideration of full payment of the civil penalty, and all other undertakings above, CARB hereby releases Arkalon and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in Paragraph 6 (Allegations) above.
- (28) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

### **PENALTY BASIS**

- (29) Per Unit Penalty. The per unit penalty in this case is a maximum of twenty-five thousand dollars (\$25,000.00 USD) per day under Health and Safety Code sections 38580 and 43027, for violations of the LCFS Regulation. (Cal. Code Regs., tit. 17, § 95494.) The penalty of fifty thousand dollars (\$50,000.00 USD) is for 366 noncompliant days. CARB has considered all relevant facts, including, but not limited to, 427 credits erroneously generated, and those listed under Health and Safety Code section 43031(b). The per unit penalty in this case is approximately one hundred thirty-seven dollars (\$137.00 USD) per noncompliant day.
- (30) Emissions. The provisions cited in Paragraph 6 (Allegations) above prohibit emissions above a specified level. Without additional information, it is not practicable to quantify the excess emissions. However, since CARB has alleged that Arkalon did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- (31) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.

(32) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Arkalon or confidential settlement communications.

(33) Effect of Settlement/Reservation of Rights. The following shall apply:

- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Arkalon with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Arkalon with respect to:
  - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
  - (ii) Facts that were not disclosed by Arkalon to CARB.
  - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
  - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
  - (v) Any criminal liability.
  - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Arkalon shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of Arkalon or of CARB against any third parties not covered by this Settlement Agreement,

nor does it limit the rights of third parties not covered by this Settlement Agreement against Arkalon, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.

- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Arkalon is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Arkalon's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Arkalon's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: /S/

Name: Heather L. Quiros

Title: Chief, Enforcement Division

Date: March 30, 2024

**Arkalon Ethanol, LLC**

Signature: /S/

Name: Tom Willis

Title: Chief Executive Officer

Date: March 26, 2024