

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") with its principal office at 1001 I Street, Sacramento, California 95814, and SHELL MARTINEZ REFINERY (hereinafter "SHELL") with its principal place of business at 3495 Pacheco Blvd., Martinez, CA 94553.

I. RECITALS

- (1) California Code of Regulations (hereinafter "CCR"), title 13, Section 2261 (Applicability of Standards; Additional Standards) provides in pertinent part as follows: "(b) Applicability of the CaRFG Phase 3 Standards. (1)(B) The remaining CaRFG Phase 3 standards and compliance requirements contained in this subarticle shall apply to all sales, supplies, or offers of California gasoline occurring on or after December 31, 2003."
- (2) California Code of Regulations, title 13, section 2266.5(a)(1) provides in pertinent part as follows: "Applicability of standards and requirements to CARBOB. All of the standards and requirements in 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 pertaining to California gasoline or transactions involving California gasoline also apply to CARBOB or transactions involving CARBOB."
- (3) 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 ..."
- (4) Health and Safety Code section 43027(c) states, "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)."
- (5) H&SC section 43029 requires the prosecuting agency to include a claim for an additional penalty designed to eliminate the economic benefits from noncompliance against 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 or standards as follows; "(a) For violations of gasoline requirements, the amount of the penalty shall equal the product of the number of tons of incremental increased vehicular emissions resulting from the manufacture, distribution, and sale of the specified volume of noncompliant fuel and nine thousand one hundred dollars (\$9,100) per ton, which is the maximum calculated cost-effectiveness for California Phase 2 Reformulated Gasoline."

- (6) Health and Safety Code section 43030(a) states, "For the penalties prescribed in Sections 43027..., each day during any portion of which a violation occurs is a separate offense."
- (7) Health and Safety Code section 43031(b) states, "In determining the amount assessed, ...the state board, in reaching any settlement, shall take into consideration all relevant circumstances, including, but not limited to, all of the following: (1) The extent of harm to public health, safety, and welfare caused by the violation. (2) The nature and persistence of the violation, including the magnitude of the excess emissions. (3) The compliance history of the defendant, including the frequency of past violations. (4) The preventive efforts taken by the defendant, including the record of maintenance and any program to ensure compliance. (5) The innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods. (6) The efforts to attain, or provide for, compliance. (7) The 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. (8) For a person who owns a single retail service station, the size of the business."
- (8) ARB alleges in Notice of Violation **F021213-RDSR-XXX** that between January 27 and February 5, 2013, SHELL combined non-certified gasoline component material with CARBOB.
- (9) ARB alleges in Notice of Violation **F021213-RDSR-XXX** that between January 27 and February 5, 2013, SHELL sold, offered for sale, supplied, or transported California gasoline containing non-certified gasoline component material to service stations from their Martinez terminal.
- (10) Specifically, ARB alleges that SHELL supplied gasoline containing non-certified component material between January 27 and February 5, 2013 committing ten violations.
- (11) ARB alleges that the sale, offer for sale, supply, and/or transport of the contaminated gasoline was unlawful and in violation of California Code of Regulations, title 13, section 2266.5(f)(1).
- (12) SHELL admits the facts described in recital paragraphs 1- 11, but denies any liability arising therefrom. 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 settlement of any and all claims that ARB has against SHELL for the matters referred to above, ARB and SHELL agree as follows:

(1) As a condition of this Settlement Agreement, within 15 days after SHELL receives the fully executed Agreement by email to David.Bleckinger@shell.com, SHELL shall pay the sum of one hundred ninety-five thousand dollars (\$195,000) as a penalty. Payment shall be made to the following as described below:

- \$146,250 by check payable to the California Air Pollution Control Fund
- \$48,750 by check payable to the San Joaquin Air Pollution Control District, with a notation on the check memo line "For School Bus Retrofit SEP"

Upon receiving the fully executed Settlement Agreement as described above, within 15 days please complete Attachment A and return it along with payment to:

California Air Resources Board
Accounting Office
P O Box 1436
Sacramento, California 95812-1436

- (2) If the Attorney General files a civil action to enforce this Agreement, SHELL shall pay all costs of enforcing the Agreement, including expert fees, reasonable attorney's fees, and costs.
- (3) SHELL shall not seek to reduce any tax liability by virtue of paying the above amount.
- (4) This Agreement shall apply to and be binding upon SHELL and its principals, officers, directors, agents, 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.
- (5) Now therefore, in consideration of the payment by SHELL as described above, ARB hereby releases SHELL and its principals, officers, directors, agents, receivers, trustees, employees, parents, subsidiaries, predecessors, successors, and assignees, and each of their officers, directors, agents, and employees from, any and all claims that ARB may have based on the facts and allegations described in recital paragraphs 1-11. The undersigned represent that they have the authority to enter this Agreement.

- (6) The parties acknowledge that the agreements, statements, stipulations, and actions herein are made solely for the purpose of settling this matter economically and without litigation or further expense.
- (7) This Agreement constitutes the entire agreement and understanding between 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 ARB and SHELL concerning these claims.
- (8) Severability. 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 to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.
- (9) No agreement to modify, amend, extend, or 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.
- (10) Advice of Counsel. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
- (11) 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.
- (12) 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.
- (13) Waiver. 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.

(14) SB 1402 STATEMENT

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This information, which is provided throughout this settlement agreement, is summarized here. ARB alleges the following:

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 section 43031.

The per unit penalty in this case is a maximum of \$35,000 per day per strict liability violation. ARB alleges that gasoline containing non-certified component material was supplied over a time period of 10 days. The total amount of penalty in this case is \$195,000 reflecting an average penalty of \$19,500 per day. The penalty was reduced because SHELL self-reported the incident, made diligent efforts to comply, and cooperated fully with the investigation.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

The penalty provision being applied in this case is Health and Safety Code section 43027 because ARB alleges that SHELL sold, offered for sale, supplied, and/or transported gasoline in California in violation of California Code of Regulations, title 13, section 2266.5(f)(1).

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 fuels 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. However, since the gasoline was not legal for sale in California, all emissions attributable to it are excess and illegal.

- (15) SHELL acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health and Safety Code section 43031, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is not being assessed under provision of law that prohibits the emission of pollutants at a specified level.
- (16) 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 cases, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain number of days considered together with the complete circumstances of this case. The penalty was discounted in this matter

based in part on the fact that SHELL made diligent efforts to comply, to cooperate with the investigation and to mitigate any potential emissions consequences. Penalties in future cases might be smaller or larger on a per day basis.

- (17) The penalty in this case was based in part on confidential financial information or confidential business information provided by SHELL that has not been retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and SHELL that ARB does not retain in the ordinary course of business either. The penalty is the product of an arm's length negotiation between ARB and SHELL and reflects ARB's assessment of the relative strength of its case against SHELL, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that SHELL may have secured from its actions.

CALIFORNIA AIR RESOURCES BOARD

By 

Name Richard W. Corey

Title ARB Executive Officer

Date 7/14/2016

SHELL MARTINEZ REFINERY

By 

Name THOMAS S RIZZO

Title GM - SHELL MARTINEZ REF

Date 2/12/16