

# SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB") 1001 I Street, Sacramento, California 95814, and Empire Tanker (hereinafter "EMPIRE TANKER"), 2809 S. Willow Avenue, Bloomington, CA 92316.

## I. RECITALS

- (1) California Health and Safety Code (HSC) section (§) 41962, subdivision (a) (HSC § 41962(a)) mandates that CARB "adopt test procedures to determine the compliance of vapor recovery systems of cargo tanks on tank vehicles used to transport gasoline with vapor emissions standards which are reasonable and necessary to achieve or maintain any applicable ambient air quality standard."
- (2) HSC § 41962(b) provides that CARB may test (verify) the vapor recovery system of any cargo tank of any tank vehicle used to transport gasoline and CARB must certify the cargo tank vapor recovery system if CARB determines the system is properly installed and maintained in compliance with the requirements adopted pursuant to HSC § 41962(a).
- (3) Pursuant to HSC § 41962(a), CARB adopted CP-204 "Certification Procedure for Vapor Recovery Systems of Cargo Tanks" and related test procedures for the certification procedure, including TP-204.1 "Determination of Five Minute Static Pressure Performance of Vapor Recovery Systems of Cargo Tanks" both of which were incorporated by reference into California Code of Regulations (CCR), title 17, § 94014 (17 CCR § 94014). TP-204.1 contains the following prohibition: "Warning: Under no circumstances shall the vapors in any cargo tank be purged or vented directly to the atmosphere". As such, 17 CCR § 94014 prohibits purging or venting gasoline vapor from a cargo tank directly into the atmosphere.
- (4) CARB considers certification of cargo tanks to be a critical component in reducing excessive Volatile Organic Compound emissions from gasoline loading and unloading.
- (5) CARB Enforcement Division documented that on November 15, 2017, EMPIRE TANKER vented gasoline vapors from two of its cargo tanks directly into the atmosphere in violation of 17 CCR § 94014.
- (6) The venting of gasoline vapors from the two cargo tanks directly into the atmosphere is a violation of state law resulting in penalties. HSC § 42402.3 authorizes civil penalties of up to \$75,000 for each violation that occurs.
- (7) In order to resolve these violations, EMPIRE TANKER has taken, or agreed to take, the actions enumerated below under "TERMS AND RELEASE". Further, CARB accepts this Agreement in termination and settlement of this matter.

- (8) 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.

## II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against EMPIRE TANKER for the alleged violations referred to above, and EMPIRE TANKER'S payment of the penalties set forth in paragraph 1 below, CARB and EMPIRE TANKER agree as follows:

- (1) EMPIRE TANKER is subject to two penalties of \$25,000 each for each cargo tanker in violation of the test procedure, for a total penalty of \$50,000. As a result of EMPIRE TANKER'S proof of financial hardship and cooperation in the investigation CARB agrees to suspend \$45,000 of the total penalty for a period of two years if EMPIRE TANKER maintains full compliance with this settlement agreement.
- (2) Upon execution of this Agreement, the sum of five thousand dollars (\$5,000.00) shall be paid on behalf of EMPIRE TANKER no later than October 29, 2018, as follows:
- \$5,000.00 payable to the **Air Pollution Control Fund**
- (3) The Parties shall exchange signed copies of this Agreement. This Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement. **Please send the original signed Settlement Agreement no later than October 29, 2018, and any future mailings or documents required per the terms of this Settlement Agreement to:**

**Bradley Shaw  
Air Pollution Specialist  
California Air Resources Board  
Enforcement Division  
P.O. Box 2815  
Sacramento, California 95812**

**Please send the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) no later than October 29, 2018, to:**

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

- (4) If the terms of this settlement agreement are violated within two (2) years of its execution, EMPIRE TANKER must pay the suspended portion of this penalty (\$45,000.00) within 60 days of the notice by CARB to EMPIRE TANKER of the settlement agreement violation and the payment shall be made payable to the **Air Pollution Control fund** and mailed to:

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

- (5) If the Attorney General files a civil action to enforce this settlement agreement, EMPIRE TANKER shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.
- (6) It is further agreed that the penalties described in "TERMS AND RELEASE", paragraph 1 are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish EMPIRE TANKER for violations of state environmental statutes, and these penalties are payable to and for the benefit of CARB, a governmental unit. Therefore, it is agreed that these penalties imposed on EMPIRE TANKER by CARB arising from the facts described in recital paragraphs (1) through (3) 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.
- (7) EMPIRE TANKER shall not violate the Certification and Testing procedures as established by HSC §§ 41962 *et seq.*, and 17 CCR §§ 94014 *et seq.*, including CP-204 and TP-204.1.
- (8) EMPIRE TANKER shall permanently remove the two fans on the east exterior wall of their facility, located at 2809 S. Willow Avenue, Bloomington, CA 92316, which were used solely for purging gasoline vapors into the atmosphere.
- (9) This Agreement shall apply to and be binding upon EMPIRE TANKER, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency

that may have responsibility for and jurisdiction over the subject matter of this Agreement.

- (10) This Agreement constitutes the entire agreement and understanding between CARB and EMPIRE TANKER concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between CARB and EMPIRE TANKER concerning the subject matter hereof.
- (11) 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.
- (12) 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.
- (13) 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.
- (14) 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.
- (15) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires CARB to provide information on the basis for the penalties it seeks (HSC § 39619.7). This information, which is provided throughout this settlement agreement, is summarized here:

**The manner in which the penalty amount was determined, including a per unit 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 HSC §§ 42403 and 43024.

Cargo Tank Vapor Recovery Violations

The strict liability penalty for the violation of 17 CCR § 94014 involved in this case is a maximum of \$75,000.00 per violation under HSC § 42402.3. The penalty applied for the venting gasoline vapor violations involved in this case is \$50,000.00 for two violations involving two cargo tanks, or \$25,000.00 per violation.

The penalty was discounted and partially suspended, in part, due to evidence of EMPIRE TANKER'S financial hardship and the fact that this was a first time

violation and the violator made diligent efforts to comply with the regulation and to cooperate 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 to the cargo tank vapor recovery certification violations is HSC § 42402.3 because EMPIRE TANKER failed to follow Test Procedure TP-204.1 in violation of the regulation in 17 CCR § 94014 *et seq.*, for two cargo tanks that was adopted pursuant to HSC § 41962 in Part 4 of Division 26.

**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 prohibit emissions above a specified level because the provision prohibits any emission of gasoline vapors directly into the atmosphere. However, it is not practicable to quantify the excess emissions in this case.

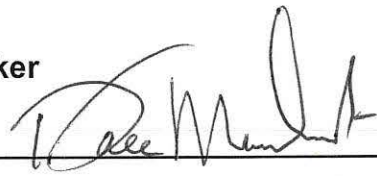
- (16) EMPIRE TANKER acknowledges that CARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, CARB has considered all relevant facts, including those listed at HSC § 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
- (17) 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. Penalties in future cases might be smaller or larger on a per unit basis.
- (18) The penalty was based on confidential settlement communications between CARB and EMPIRE TANKER that CARB does not retain in the ordinary course of business. The penalty is the product of an arm's length negotiation between CARB and EMPIRE TANKER and reflects CARB's assessment of the relative strength of its case against EMPIRE TANKER, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that EMPIRE TANKER may have secured from its actions.

(19) Now therefore, in consideration of the payment on behalf of EMPIRE TANKER to the Air Pollution Control Fund, CARB hereby releases EMPIRE TANKER and their principals, officers, agents, predecessors and successors from any and all claims, CARB may have or have in the future based on the circumstances described in paragraphs (1) through (5) of the Recitals excluding any violation of this settlement agreement which affects the suspended penalty. The undersigned represent that they have the authority to enter into this Agreement.

**California Air Resources Board**

**Empire Tanker**

Signature: 

Signature: 

Print Name: Dr. Todd P. Sax

Print Name: Dale Marchant

Title: Chief, Enforcement Division

Title: President, Empire Tanker

Date: 12/11/18

Date: 11-6-18

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