

This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (CARB), 1001 I Street, Sacramento, California, and Tesoro Refining & Marketing Company LLC (the Company), 19100 Ridgewood Parkway, San Antonio, Texas.

RECITALS

1. The Global Warming Solutions Act of 2006 authorized CARB to adopt regulations to reduce greenhouse gas emissions. (Health & Saf. Code, § 38500 et seq.) Pursuant to that authority, CARB adopted the Low Carbon Fuel Standard, California Code of Regulations (CCR), title 17, section 95480 et seq. (LCFS).
2. The LCFS is crucial to incentivizing innovative fuels that will reduce greenhouse gas (GHG) emissions. The regulation provides that fuel producers and importers generate deficits by supplying petroleum-based fuels, which have a carbon intensity higher than a stated annual carbon intensity standard. On the other hand, low-carbon fuel producers and importers can generate credits by supplying transportation fuels with a carbon intensity below the stated standard. The regulation requires all fuel producers and importers to report the volume of fuel they supply and its corresponding carbon intensity. The volume and carbon intensity determine the number of credits or deficits the fuel will generate when reported to CARB.
3. Section 95491(a)(2) requires reporting parties to submit quarterly and annual reports, each of which must contain a statement attesting to accuracy.¹ For the fuels transactions in a quarterly report, the reporting party includes volume, fuel type, pathway code, and whether the corresponding credits or deficits were transferred with the fuel.
4. LCFS section 95494(b) provides that each day that a required report remains unsubmitted, incomplete or inaccurate constitutes a separate violation.
5. As alleged in Notice of Violation # F032317-TSOR-RPT, the Company submitted 24 quarterly reports containing 39 errors involving underreported petroleum fuels, 78 errors involving overreported petroleum fuels, and 27 errors stemming from failing to reconcile reported low carbon biofuels transactions with other parties.
6. California Health & Safety Code sections 38580 and 43027(c) provide that a person who violates any LCFS provision is strictly liable for daily penalties of up to \$35,000 per day.
7. To resolve these violations, the Company has taken, or agreed to take, the actions enumerated below. Further, CARB accepts this Agreement in termination and settlement of this matter.

¹ Regulatory citations are to the current LCFS regulation, effective January 1, 2016. Prior LCFS versions contained the same requirement. See §95484(c) (eff. 2010) and §95484(b)(2) (eff. 2013).

TERMS

In consideration of CARB not filing a legal action against the Company for the alleged violations referred to above, and in consideration of the terms set out below, CARB and the Company agree as follows:

Within 30 business days after CARB signs and delivers this Agreement to the Company, the Company shall pay the civil penalty in the total amount of \$1,365,000.

8. Once both parties have executed this Agreement, the Company shall send (1) one copy of this Agreement, (2) payment, and (3) the payment transmittal form (Attachment A) to:

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

and send a copy of the same documents to:

Rachel Connors, Air Resource Engineer
Fuels Enforcement Section, Enforcement Division
California Air Resources Board
8340 Ferguson Avenue
Sacramento, CA 95828

9. The parties further agree that the penalties described in the prior paragraph are punitive in nature, rather than compensatory, and payable to a governmental unit. Therefore, it is agreed that these penalties arising from the facts described in paragraph 5, above, are non-dischargeable under 11 United States Code § 523 (a)(7).

10. This Agreement shall apply to and be binding upon the Company, 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.

11. This Agreement constitutes the entire agreement and understanding between CARB and the Company concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements, whether made orally or in writing, between CARB and the Company concerning the subject matter hereof.

12. 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.

13. Each provision of this Agreement is severable, and in the event that a court holds that any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

14. 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.

15. This Agreement was drafted equally by the Parties; it should not be interpreted for or against either party on the ground that said party drafted it.

16. In consideration of the payment from the Company to the Air Pollution Control Fund and other good and valuable consideration, CARB hereby releases and forever discharges the Company and their principals, officers, directors, shareholders, employees, agents, predecessors, affiliates, successors and assigns, from claims that CARB has or may have based on the allegations in paragraph 5 subject to the following exception: in the unlikely event that information comes to light indicating that the violations alleged in paragraph 5 resulted from one or more employee's intentional decision to violate the LCFS, the release in this paragraph does not extend to such employee(s).

PENALTY BASIS

17. Health & Safety Code section 39619.7 requires CARB 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. CARB has considered all relevant facts, including those listed at Health & Safety Code section 43031, has explained the manner in which the penalty amount was calculated, and has identified the provision of law under which the penalty is being assessed. We summarize that information here.

The manner in which the penalty was determined, including any per unit penalty. The maximum penalty established by statute is \$35,000 per violation per day. Violations involving underreported petroleum fuels were assessed a penalty of \$20,000, reflecting the large volume of fuel involved, and the violation's impact on the program's goals. Violations involving over-reporting did not benefit the company, and were significantly discounted because of the company's voluntary disclosure; penalties for these violations were assessed at \$7,500 per violation. In this case CARB did not assess penalties for violations stemming from failing to reconcile reported low carbon biofuels transactions with other parties because the volume of fuel involved was small, and because of the voluntary disclosure. Penalties in future cases might be smaller or larger.

The governing legal provisions. The penalty is based on Health & Safety Code section 43027 and CCR, title 17, section 95494, the provisions intended to govern violations of the LCFS.

Whether the governing provisions prohibit emissions at a specified level. 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 of an air contaminant for purposes of the governing penalty statutes.

18. The penalty reflects confidential settlement communications between CARB and the Company. The penalty is the product of an arms-length negotiation between CARB and the Company and reflects CARB's assessment of the relative strength of its case against the Company, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that the Company may have secured from its actions.

19. In consideration of the penalty payment specified herein, CARB hereby releases the Company and its successors and assignees, subsidiary and parent corporations from any claims the CARB may have based on the circumstances described in paragraph 5, above.

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

California Air Resources Board

By: _____

Richard W. Corey
Executive Officer

Date: _____

6/1/2018

**Tesoro Refining & Marketing Company
LLC**

By: _____

Kim K. Rucker
EVP, General Counsel & Secretary

Date: _____

5/18/18

