

## 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 CHEVRON U. S. A. INC. (hereinafter "CHEVRON") with its principal place of business at 6111 Bollinger Canyon Road, San Ramon, CA 94583.

### I. RECITALS

(1) California Code of Regulations (hereinafter "CCR"), Title 13, Section 2282 (Aromatic Hydrocarbon Content of Diesel Fuel) provides in pertinent part as follows:

(a) *Regulatory Standard.*

(1) On or after October 1, 1993, except as otherwise provided in this subsection (a), no person shall sell, offer for sale, or supply any vehicular diesel fuel unless:

(A) The aromatic hydrocarbon content does not exceed 10 percent by volume; or

(B) The vehicular diesel fuel has been reported in accordance with all of the requirements of subsection (d), and:

1. The aromatic hydrocarbon content does not exceed the designated alternative aromatic hydrocarbon limit, and

2. Where the designated alternative aromatic hydrocarbon limit exceeds 10 percent by volume, the excess aromatic hydrocarbon content is fully offset in accordance with subsection (d); or

(C) The vehicular diesel fuel has been reported in accordance with all of the requirements of subsection (g)(7), and meets all of the specifications for a certified diesel fuel formulation identified in an applicable Executive Order issued pursuant to subsection (g)(6); or

(D) The vehicular diesel fuel has been reported in accordance with all of the requirements of subsection (h)(2), and meets all of the designated equivalent limits set forth in subsection (h)(1); or

(E) The vehicular diesel fuel is exempt under subsection (e) and:

1. The aromatic hydrocarbon content does not exceed 20 percent by volume; or

2. The vehicular diesel fuel has been reported in accordance with all of the requirements of subsection (d), and

- a. The aromatic hydrocarbon content does not exceed the designated alternative limit, and
  - b. Where the designated alternative limit exceeds 20 percent by volume, the excess aromatic hydrocarbon content is fully offset in accordance with subsection (d), treating all references in subsection (d) to 10 percent by volume as references to 20 percent by volume; or
3. The vehicular diesel fuel has been reported in accordance with all of the requirements of subsection (g)(7), and meets all of the specifications for a certified diesel fuel formulation identified in an applicable Executive Order issued pursuant to subsections (g)(6) and (g)(8).

**(g) *Certified Diesel Fuel Formulations Resulting in Equivalent Emissions Reductions.***

(6) If the executive officer finds that a candidate fuel has been properly tested in accordance with this subsection (g), and makes the determinations specified in subsection (g)(5), then he or she shall issue an Executive Order certifying the diesel fuel formulation represented by the candidate fuel. The Executive Order shall identify all of the characteristics of the candidate fuel determined pursuant to subsection (g)(2). The Executive Order shall provide that the certified diesel fuel formulation has the following specifications: [1] a sulfur content, total aromatic hydrocarbon content, polycyclic aromatic hydrocarbon content, and nitrogen content not exceeding that of the candidate fuel, [2] a cetane number not less than that of the candidate fuel, [3] any additional fuel specification required under subsection (g)(2)(A)3.b, and [4] presence of all additives that were contained in the candidate fuel, in a concentration not less than in the candidate fuel, except for an additive demonstrated by the applicant to have the sole effect of increasing cetane number. All such characteristics shall be determined in accordance with the test methods identified in subsection (g)(2). The Executive Order shall assign an identification name to the specific certified diesel fuel formulation.

(7) In order for a producer or importer of a final blend to comply with subsection (a) through the sale, offer for sale or supply of a certified diesel fuel formulation, the producer or importer shall notify the executive officer in accordance with this subsection (g)(7). The notification shall identify the final blend and the identification name of the certified diesel fuel formulation. The notification shall be received by the executive officer at least 12 hours before start of physical transfer of the final blend from the production or import facility. A producer or importer intending to have a series of its final blends be a specific certified formulation may enter into a protocol with the executive officer for reporting such blends as long as the executive officer reasonably determines the reporting under the protocol would provide at least as much notice to the executive officer as notification pursuant to the express terms of this subsection (g)(7).

- (2) H&SC section 43027(c) states, "[a]ny 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) H&SC section 43027(d) states, "[a]ny person who enters false information in, or fails to keep, any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, is strictly liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000)..."
- (4) 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; "(b) For violations of diesel fuel 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 five thousand two hundred dollars (\$5,200) per ton, which is the maximum calculated cost-effectiveness for California low sulfur, low aromatics diesel fuel..."
- (5) H&SC 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."
- (6) H&SC section 43031(b) states, "[i]n 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."
- (7) ARB alleges in Notice of Violation **F10-8-5** the following: On August 26, 2009, the Chevron refinery located at 324 West El Segundo Blvd. in El Segundo, California, dispensed diesel fuel to the loading rack at their El Segundo California terminal that did not meet the Cetane Number specifications in CARB Executive Order G-714-021.
- (8) ARB alleges that the sale, offer for sale, supply, or offer for supply of diesel that did not contain the minimum motor cetane number was unlawful and in violation of CCR, title 13, section 2282.

- (9) CHEVRON denies the preceding allegations and makes no admission of any fact or liability whatsoever with respect to the preceding allegations.
- (10) CHEVRON 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 CHEVRON for matters referred to above, ARB and CHEVRON agree as follows:

- (1) Within 15-days after the last party signs this Agreement, CHEVRON shall pay the sum of twenty five thousand dollars (\$25,000). Payment shall be made by check payable to the California Air Pollution Control Fund and addressed to:

Duong Trinh  
Air Resources Board / Enforcement Division  
9480 Telstar Avenue #4  
El Monte, CA 91731

- (2) CHEVRON shall not seek to reduce any tax liability by virtue of paying the above amount.
- (3) This Agreement shall apply to and be binding upon CHEVRON 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.
- (4) Now therefore, in consideration of the payment of CHEVRON to the California Air Pollution Control Fund, ARB hereby releases CHEVRON 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 1-10. The undersigned represent that they have the authority to enter this Agreement.
- (5) No provision of the Agreement shall be construed as an admission of any wrongdoing, or of a violation of the CCR or any other statute, regulation, ordinance, order, or legal requirement by CHEVRON, its principals, officers, directors, agents, employees, parents, or subsidiaries. CHEVRON does not admit the truth of any of the alleged facts contained herein. 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.

- (6) This Agreement constitutes the entire agreement and understanding between ARB and CHEVRON 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 CHEVRON concerning these claims.
- (7) If any court of competent jurisdiction declares or determines any provision of this Agreement to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, and provisions shall not be affected thereby, and said illegal, unenforceable, or invalid part, term or provision will be deemed not to be part of this Agreement.
- (8) No agreement to modify, amend, extend, or supersede this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
- (9) 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.

### III. 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 diesel fuel which did not meet the minimum Cetane Number as specified in CARB Executive Order G-714-021 was sold and or offered for sale or supplied or offered for supply for one day. The total amount of penalty in this case is \$25,000. The penalty was reduced because CHEVRON 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 CHEVRON put fuel into commerce in California in violation of Title 13 California Code of Regulations section 2282.

**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 fuel did not meet California air pollution standards, any emissions attributable to them

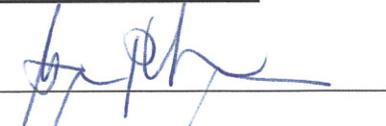
are illegal. However, it is not practicable to quantify these emissions because the information necessary to do so is not available.

- (1) CHEVRON 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 & 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. No other representation or acknowledgement is made nor intended regarding ARB compliance with SB 1402.
- (2) 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 the violator made unusually 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. Chevron does not endorse ARB's method of penalty calculation in this case and reserves the right to challenge it in future cases, should they arise.
- (3) The penalty in this case was based in part on confidential financial information or confidential business information provided by CHEVRON 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 CHEVRON 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 CHEVRON and reflects ARB's assessment of the relative strength of its case against CHEVRON, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that CHEVRON may have secured from its actions.

**CALIFORNIA AIR RESOURCES BOARD**

By   
Name Ellen M. Peter  
Title Chief Counsel  
Date 1/26/2013

**CHEVRON U. S. A. INC.**

By   
Name Grace P. Nerona  
Title Assistant Secretary  
Date January 2<sup>nd</sup>, 2013