

This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB) and KERN OIL & REFINING COMPANY (Kern Oil), 7724 East Panama Lane, Bakersfield, CA 93307.

RECITALS

1. The Global Warming Solutions Act of 2006 authorized ARB to adopt regulations requiring the reporting and verification of greenhouse gas emissions. (Health & Saf. Code §38530.) Pursuant to that authority, ARB adopted the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR), California Code of Regulations (CCR), title 17, §95100 et seq.
2. The MRR is crucial to the development of the greenhouse gas (GHG) inventory, and supports other regulatory programs, including the cap on GHG emissions established by CCR, title 17, §95801 et seq., known as the Cap-and-Trade Regulation. The MRR requires most reporting entities to submit, by April 10 of each year, an emissions data report containing emissions and product data that the entity certifies as accurate within stated standards. (CCR, tit. 17, §95103.)
3. To facilitate accurate measurement, the MRR includes several requirements for calibration and measurement device accuracy. The MRR requires measurement devices to be operated and maintained in a manner to ensure accuracy within 5 percent, and specifically requires reporting entities to inspect pressure differential devices at least once during every three-year compliance period. (CCR, tit. 17, §95103(k)(6)(A)1.)
4. California Health & Safety Code sections 38580 and 42402 provide that one who violates the MRR or related regulations is strictly liable for a penalty of up to \$10,000 for each violation each day.
5. During the first compliance period ending December 31, 2014, Kern Oil failed to inspect a pressure differential device measuring fuel gas utilized at its refinery. When later inspected during 2015, the company discovered that the orifice plate of the pressure differential device was corroded. As a result, Kern Oil was not confident the data collected by the pressure differential device met the MRR standards for accuracy; Kern Oil therefore utilized the "missing data" provisions to complete its 2015 emissions report.
6. In reaching this settlement, ARB considered a variety of circumstances, including whether the company self-reported the violation, the nature, magnitude, and duration of the violation, any harm to the environment or the regulatory program, efforts the violator took to prevent the violation and to correct it, and the financial burden to the violator.
7. In this matter, ARB considered the maintenance lapse to be serious because the meter in question was central to almost all emissions reporting at the facility. On the other hand, this is the first time ARB has noted the company as being in violation of the MRR. The company asserts that because the circumstances required it to use the missing data provisions, its compliance obligation under the Cap and Trade Program was higher. The company has agreed to submit an updated GHG monitoring plan to ARB to demonstrate better maintenance and calibration practices in future years.

8. To resolve the alleged violation, Kern Oil has taken, or agreed to take, the actions enumerated below. ARB accepts this Agreement in termination and settlement of this matter.

9. 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. Specifically, ARB and Kern Oil agree as follows.

TERMS

10. Within 15 business days following receipt of a fully executed copy of this Agreement, Kern Oil shall deliver a cashier's check, wire transfer or money order in the sum of \$75,000 made payable to the "Air Pollution Control Fund."

The check should note "Kern Oil 2015 MRR Settlement" in the memo section. Kern Oil shall send (1) the signed settlement agreement, (2) check, and (3) the payment transmittal form (Attachment A) to:

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

and send a copy of the settlement agreement and copy of the check to:

William Brieger
Air Resources Board
P.O. Box 2815
Sacramento, CA 95812-2815

11. The parties further agree that the penalties described in the prior paragraph are payable to a governmental unit and punitive in nature, rather than compensatory. Therefore these penalties, arising from the facts described in recital paragraphs 1 – 9, are non-dischargeable under 11 United States Code §523(a)(7).

12. Within 90 days of executing this Agreement, Kern Oil shall submit to ARB an updated Greenhouse Gas Monitoring Plan that meets the requirements of CCR, title 17, section 95105(c), and that addresses the schedule for maintaining and calibrating meters relied on for emissions reporting.

13. This Agreement shall apply to and be binding upon Kern Oil, and any receivers, trustees, 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.

14. This Agreement constitutes the entire agreement and understanding between ARB and Kern Oil concerning the subject matter hereof, and supersedes all prior

negotiations and agreements between ARB and Kern Oil concerning the subject matter hereof.

15. 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.

16. 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.

17. 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.

18. 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.

The Penalty's Basis

19. Health & Safety Code section 39619.7 requires ARB 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. ARB has considered all relevant factors, including those listed at Health & Safety Code section 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed, which provision does not prohibit the emission of pollutants at a specified level. That information is summarized here.

The manner in which the penalty was determined, including any per-unit penalty. Penalties must be set at levels sufficient to deter violations. The penalty in this matter was determined based on all relevant circumstances, including the unique circumstances of this case, and the eight factors specified in Health & Safety Code section 42403. ARB considered the extent to which the monitoring and reporting deviated from MRR requirements and the length of time until the company's delayed meter inspection. ARB considered those circumstances together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, penalties sought in other cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger.

In this matter, the penalty was not determined on a per-unit basis. ARB discounted the penalty because the violation was the company's first in connection with the MRR, and the company made diligent efforts to cooperate with ARB's investigation.

The legal provisions under which the penalty was assessed and why those provisions are appropriate. The penalty is based on Health & Safety Code section 42402 and CCR, title 17, section 95107, the provisions intended to govern MRR violations.

Whether the governing provisions prohibit emissions at a specified level. The MRR does not prohibit emissions above a stated level, but 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 for purposes of the governing penalty statutes.

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

21. In consideration of the penalty payment and undertaking in paragraph 12, above, ARB hereby releases Kern Oil and its receivers, trustees, successors and assignees, subsidiary and parent corporations from any claims the ARB may have based on the circumstances described in paragraph 5, above.

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

California Air Resources Board

By: 
Ellen M. Peter
Chief Counsel

Date: 11/29/2017

Kern Oil & Refining Co.

By: 
Bruce Cogswell
Sr. Vice President / COO

Date: 11/14/17