SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the California Air Resources Board (ARB), with its principal office at 1001 I Street, Sacramento, California, and O'Reilly Automotive, Inc. (O'Reilly Automotive) with its principal place of business at 233 South Patterson, Springfield, Missouri.

RECITALS

1. ARB alleges that from December 2008 to May 2009, O'Reilly Automotive sold, supplied, and offered for sale in California, 37,875 units of O'Reilly Carb & Choke Cleaner product, manufactured by Technical Chemical Company for O'Reilly Automotive, and subject to the volatile organic compound (VOC) limit for Carburetor or Fuel-Injection Air Intake Cleaners, title 17, California Code of Regulations (CCR), section 94509(a).

2. ARB alleges that the O'Reilly Carb & Choke Cleaner product manufactured by Technical Chemical Company contained concentrations of VOCs exceeding the 45 percent VOC limit for Carburetor or Fuel-Injection Air Intake Cleaners specified in title 17, CCR, section 94509(a).

3. ARB alleges that if the allegations described in recital paragraphs 1 and 2 were proven, civil penalties could be imposed against O'Reilly Automotive and Technical Chemical Company as provided in Health and Safety Code sections 42402 et seq. for each and every unit involved in the violations.

4. O'Reilly Automotive admits the allegations described in recital paragraphs 1 and 2, but denies any liability resulting from said allegations.

5. The parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

Therefore, the parties agree as follows:

TERMS AND CONDITIONS

1. O'Reilly Automotive shall not sell, supply or offer for sale for use in California any consumer products in violation of ARB consumer products regulations set forth in title 17, CCR, Section 94500 et seq. however, the terms and conditions set forth in this agreement will remain valid and enforceable notwithstanding any future violations that may occur.

2. O'Reilly Automotive in settlement of the above-described violation of title17, CCR, section 94509(a) agrees to pay a half share of the $63,000.00 penalty to ARB in the amount of $31,500.00 payable to the California Air Pollution Control Fund, concurrent with the execution of this Agreement, and with the understanding that Technical Chemical Company will pay the other half share of the $63,000.00 penalty in the amount of $31,500.00.

3. This settlement shall apply to and be binding upon O'Reilly Automotive and its officers, directors, 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 settlement.

4. The parties stipulate that this Agreement shall be the final resolution of ARB claims regarding the above-described violations and shall have the same res judicata effect as a judgment in terms of acting as bar to any civil action by ARB against O'Reilly Automotive, its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations. This Agreement shall be deemed the recovery of civil penalties for purposes of precluding subsequent criminal action as provided in Health and Safety Code section 42400.7(a).

5. 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.

6. This Agreement constitutes the entire agreement and understanding between ARB and O'Reilly Automotive 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 O'Reilly Automotive concerning these claims.

7. No agreement to modify, amend, extend, 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.

8. Each of the undersigned represents and warrants that he or she has full power and authority to enter into this Agreement.

9. **SB 1402 Statement**. California Health and Safety Code (HSC) section 39619.7 (Senate Bill 1402 - Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks. This Settlement Agreement includes this information, which is also summarized here.

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 is this case is HSC section 42402, et seq. because O'Reilly Automotive sold, supplied, or offered for sale a consumer product for commerce in California in violation of the Consumer Products Regulations (Title 17 California Code of Regulations (CCR) section 94507, et seq.). The penalty provisions of HSC section 42402, et seq. apply to violations of the Consumer Products Regulations because the regulations were adopted under authority of HSC section 41712 which is in Part 4 of Division 26 of the Health and Safety Code. The penalty provisions of HSC section 42402, et seq. apply to requirements adopted pursuant to Part 4.

The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit or per vehicle basis for the penalty.

Penalties must be set at levels sufficient to discourage violations. ARB considered all relevant circumstances in determining penalties, including the eight factors specified in HSC section 42403.

Under HSC section 42402, et seq. the penalties for strict liability violations of the Consumer Product Regulations are a maximum of $1,000 per day of violation, with each day being a separate violation. In cases like this involving unintentional first time violations of the Consumer Products Regulations where the violator cooperates with the investigation, ARB has sought and obtained penalties of approximately $17,000 per ton of excess emissions of volatile organic compounds attributable to the violation. This represents an average cost to retire a ton of volatile organic compound emission credits and reformulate a product to comply with the Consumer Product Regulations. In this case the total penalty is $63,000 and there were 3.40 tons of excess VOC attributable to the violation. This represents a penalty of approximately $18,500 per ton of excess emissions with the inclusion of investigative costs. Penalties in future cases might be smaller or larger on a per ton basis.

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 the excess emissions, if it is practicable to do so.

The Consumer Product Regulations do not prohibit emissions above a specific level, but they do limit the concentration of VOCs in regulated products. In this case a quantification of the excess emissions attributable to the violations was practicable because O'Reilly Automotive provided the sales data and Technical Chemical Company provided the product formulation necessary to make this quantification available to the ARB. Based upon this information (which O'Reilly Automotive and Technical Chemical Company

designated as confidential), the violations were calculated to have caused the 3.40 tons of excess emissions of volatile organic compounds to be emitted to the atmosphere in California.

10. O'Reilly Automotive acknowledges that ARB has complied with SB1402 in investigating and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty amount is being assessed and had considered and determined that while this penalty is not being assessed a provision of law that prohibits the emission of pollutants at a specified level, it is practicable for ARB to quantify the excess emissions from the alleged violations, has done so and has included this information in this Settlement Agreement.

11. Final 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 negotiated cases, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days resulting in quantifiable harm to the environment considered together with the complete circumstances of this case listed above. Penalties in future cases might be smaller or larger on a per ton basis.

12. The final penalty in this case was based in part on confidential business information provided by O'Reilly Automotive and Technical Chemical Company that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB, O'Reilly Automotive and Technical Chemical Company that ARB does not retain in the ordinary course of business. The penalty also reflects ARB's assessment of the relative strength of its case against O'Reilly Automotive, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that O'Reilly Automotive may have secured from its actions.

CALIFORNIA AIR RESOURCES BOARD

Dated: 6/15/2012

By: _____
Ellen M. Peter
Chief Counsel

O'REILLY AUTOMOTIVE, INC.

Dated: 6/12/12

By: _____
Emmitt Barina
Director of Safety, Environmental
and Regulatory Compliance