

## 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 VITOL Inc. (hereinafter "VITOL") with its principal place of business at 1100 Louisiana Street, Suite 5500 Houston, Texas 77002.

### RECITALS

- (1) California Code of Regulations, title 13, Section 2261(b)(1)(B) provides in pertinent part as follows: "The remaining CaRFG Phase 3 standards and compliance requirements contained in this subarticle shall apply to all sales, supplies, or offers of California gasoline occurring on or after December 31, 2003."
- (2) Section 2262 (The California Reformulated Gasoline Phase 2 and Phase 3 Standards) provides in pertinent parts as follows: "The CaRFG Phase 2 and CaRFG Phase 3 standards are set forth in the following table. For all properties but Reid vapor pressure (cap limit only) and oxygen content, the value of the regulated property must be less than or equal to the specified limit." The referenced table provides that the T50 and T90 limits are 213 °F and 305 °F, respectively.
- (3) Health and Safety Code section 43027(c) states, "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 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)."
- (4) Health and Safety Code 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."
- (5) Health and Safety Code section 43031(b) states, "In determining the amount assessed, the court, the Attorney General, or 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."

- (6) ARB alleges that VITOL sold, offered for sale, supplied, and/or offered for supply premium grade CARBOB that did not meet the standards for T50 and T90 over a period of two days.
- (7) VITOL alleges that the CARBOB at issue did not cause harm to public health, safety or welfare.
- (8) VITOL further alleges that the CARBOB at issue did not result in excess emissions.
- (9) VITOL has not had an enforcement action by ARB since 2005..
- (10) VITOL alleges that the CARBOB at issue was released by a third party due to a miscommunication.
- (11) VITOL self-disclosed the violation and promptly and fully cooperated with ARB throughout its investigation.
- (12) VITOL promptly contacted third parties to ensure that the tender was isolated and sampled. VITOL further took steps to prevent the distribution of resulting gasoline, which is alleged to have exceeded CaRFG Phase 3 standards.
- (13) VITOL admits the facts described in recital paragraphs 1 – 6, but denies any liability arising therefrom.
- (14) VITOL 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.

## TERMS AND RELEASE

In consideration of ARB not filing a legal action against VITOL for the violations alleged above, and in consideration of the other terms set out below, ARB and VITOL agree as follows:

- (1) As a condition of this Settlement Agreement, VITOL shall pay the sum of seventy thousand dollars (\$70,000) as a penalty. This amount shall be payable within 15 days after the last party signs this Agreement. 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) If the Attorney General files a civil action to enforce this settlement agreement, VITOL shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (3) It is agreed that the penalty described in terms and release paragraph (1) is punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish VITOL for violations of state environmental statutes, and this penalty is payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that this penalty imposed on VITOL by ARB arising from the facts alleged in recital paragraphs 1-13 are nondischargeable under 11 U.S.C § 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.
- (4) This Agreement shall apply to and be binding upon VITOL 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.
- (5) Now therefore, in consideration of the payment by VITOL to the California Air Pollution Control Fund in the amount specified above, ARB hereby releases VITOL and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, and subsidiary and parent corporations from any and all claims that ARB may have based on the allegations described in recital paragraphs 1-6. The undersigned represent that they have the authority to enter this Agreement.
- (6) This Agreement constitutes the entire agreement and understanding between ARB and VITOL 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 VITOL 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) Advice of Counsel. Each Party to this Agreement has reviewed the Agreement

independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into 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.
- (10) 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 to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.
- (11) 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.
- (12) Waiver. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.
- (13) **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires ARB to provide information on the basis for the penalties it seeks. This required information, which is provided throughout this settlement agreement, is summarized here.

**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. The penalty obtained in this case is \$17,500 per day for each of the violations. The penalty was reduced in consideration of several factors including VITOL's full cooperation, compliance history, and that this was a self-reported violation.

**The provision of law the penalty is being assessed under and why that**

**provision is most appropriate for that violation.**

ARB alleges that the penalty provisions being applied in this case, Health and Safety Code sections 43027 and 43030, are appropriate because VITOL allegedly sold, offered for sale, supplied, or offered for supply CARBOB into commerce in California in violation of California Code of Regulations, title 13, sections 2262 and 2266.5.

**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 CARBOB did not meet the CARBOB 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.

- (15) VITOL 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 and 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.
- (16) 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 on the fact that the alleged violation, if committed, was done so innocently, and because VITOL 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.
- (17) The penalty in this case was based in part on confidential business information provided by VITOL 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 and VITOL that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against VITOL, the desire to avoid the

uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that VITOL may have secured from its alleged actions.

**CALIFORNIA AIR RESOURCES BOARD**

**VITOL Inc.**

By Ellen M. Peter

Name Ellen M. Peter

Title Chief Counsel

Date 5/2/2014

By Ronald S. Oppenheimer

Name Ronald S. Oppenheimer

Title SVP + GC

Date 4/15/14