

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and PSC Custom, LLC, dba Polar Service Centers (Polar Service Centers), with its principal location at 4432 Winters Street, McClellan Park, California 95652, (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates CARB to adopt test procedures and certification rules for compliance of vapor recovery systems of cargo tanks on tank vehicles used to transport gasoline with vapor emission standards that are reasonable and necessary to achieve or maintain any applicable ambient air quality standard. (Health & Saf. Code § 41962.)
- (2) Regulation. CARB adopted the *Vapor Recovery Systems in Gasoline Marketing Operations, Certification of Vapor Recovery Systems for Cargo Tanks Regulation* (Cargo Tanks Regulation) to reduce emissions of Toxic Air Contaminants (TACs) that cause adverse health effects and Volatile Organic Compounds (VOCs) from cargo tank vehicles used to transport gasoline. (Health & Saf. Code § 41962; Cal. Code Regs., tit.17, § 94014.)
- (3) Regulatory Provisions. No person shall operate or allow operation of a cargo tank vehicle transporting gasoline without a vapor recovery system that has been certified using proper certification and test procedures, which include a prohibition on purging or venting gasoline vapor from a cargo tank directly into the atmosphere. (Cal. Code Regs., tit. 17, § 94014.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to ten thousand dollars (\$10,000) for strict liability violations, twenty-five thousand dollars (\$25,000) for negligent violations; and forty thousand dollars (\$40,000) for failing to take corrective action, and seventy-five thousand dollars (\$75,000) for willful and intentional violations, respectively, for each day in which the violation occurs. (Cal. Code Regs., tit.17, 94014; Health & Saf. Code §§ 41962, 42400.1, 42400.2, 42402.3, and 42410.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Polar Service Centers was organized under the laws of Texas as PSC Custom, a limited liability company, doing business as Polar Service Centers, and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) CT-0320-01, which was issued on September 25, 2020. CARB alleges that Polar

Service Centers violated the Cargo Tanks Regulation by purging or venting gasoline vapors directly into the atmosphere at 4432 Winters Street, McClellan Park, in California, which did not conform to the requirements of the Cargo Tanks Regulation as outlined in Notice of Violation CT-0320-01. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against Polar Service Centers for each and every piece of equipment involved in the violation(s) and each day.

- (7) Acknowledgment. Polar Service Centers admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) Consideration. 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 alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, Polar Service Centers has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against Polar Service Centers for the alleged violations referred to above in the Legal Background and Case Background, and Polar Service Centers' agreement to complete all terms and conditions set forth below, CARB and Polar Service Centers agree as follows:

- (9) Settlement Amount. Polar Service Centers shall pay a civil penalty of fifteen thousand dollars (\$15,000.00 USD), and agrees to fund a Supplemental Environmental Project (SEP) entitled Side Street Projects – Woodworking Bus, in the amount of fifteen thousand dollars (\$15,000.00 USD), consistent with CARB's SEP Policy, for a total settlement of thirty thousand dollars (\$30,000.00 USD). Polar Service Centers shall make all payments within 30 calendar days from the date CARB notifies Polar Service Centers of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Polar Service Centers shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Polar Service Centers is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to Polar Service Centers in accordance with Paragraph 17 (Notices).

- (11) SEP Payment Method(s). Polar Service Centers shall fund the SEP by wire transfer, credit card, or check, payable to the SEP implementer/recipient, Side Street Projects - Woodworking Bus, using instructions provided separately by CARB in a Payment Transmittal Form. Polar Service Centers is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to Polar Service Centers in accordance with Paragraph 17 (Notices).
- (12) Prohibition Against Financial Benefit. Polar Service Centers has agreed that by funding the SEP entitled Side Street Projects – Woodworking Bus, Polar Service Centers will not receive any direct or indirect financial benefit, and that whenever Polar Service Centers publicizes or refers to the SEP or the results of the SEP, Polar Service Centers will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (13) Assignment of Rights. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, Polar Service Centers assigns any and all rights against the SEP implementer to CARB.
- (14) Compliance Plan. Polar Service Centers shall submit to CARB and implement a Compliance Plan, within 60 days of full execution of this Settlement Agreement to ensure that Polar Service Centers complies with all provisions of the laws and regulations outlined in the Legal Background.
- (15) California Air Resources Board, Compliance Assistance Program (CAP) Cargo Tank Certification Training: TP-204.1. Polar Service Centers shall require completion of this training by all company staff and contractors who perform cargo tank certifications in compliance with CARB's TP-204.1, Determination of Five-Minute Static Pressure Performance of Vapor Recovery Systems of Cargo Tanks. This class is conducted by CARB staff and instructs attendees on compliance with Cargo Tank Regulation certification regulatory requirements. Applicable staff shall complete this training no more than one year after CARB staff have notified Polar Service Centers that the classes are being offered. Polar Service Centers shall provide proof of training completion to CARB staff within one month of the date of training completion and maintain such proof of training in each applicable employee's or contractor's file for the term of his or her employment as well as be maintained with the annual records.

Polar Service Centers Settlement Agreement
Notice of Violation: CT-0320-01

- (16) Documents. Polar Service Centers shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, mitigation, and/or SEP (if applicable), a copy of the Payment Transmittal Form(s) (if applicable), and the signed and dated Compliance Plan (if applicable) to the address or email in Paragraph 17 (Notices).
- (17) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:
California Air Resources Board
Enforcement Division / Settlement Agreements
Citations and Registration Enforcement Branch
Equipment Registration Section
P.O. Box 2815
Sacramento, California 95812-2815
Email proof of payment and PTF to: Settlement_Agreement@arb.ca.gov

As to Polar Service Centers:
Polar Service Centers, LLC
Jerry Cignarella
7600 East Sam Houston Parkway North
Houston, Texas 77049
Jerry.Cignarella@polarsvc.com

As to Polar Service Centers Legal Representation:
Martin J. Kelly McTigue
O'Melveny & Myers LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071
kmctigue@omm.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (18) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Polar Service Centers shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.

- (19) Repeat Violations. Polar Service Centers agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (20) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background, and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 8 pages and 38 paragraphs.
- (21) Binding Effect. This Settlement Agreement binds Polar Service Centers, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (22) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (23) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (24) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (25) Choice of Law. This Settlement 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.
- (26) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 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 the benefit of a governmental unit.
- (27) Not Tax Deductible. For purposes of this Settlement Agreement, Polar Service Centers shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, state, or local income tax.

- (28) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (29) Non-Waiver. The failure to enforce any provision of this Settlement 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 Settlement 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 Settlement Agreement or otherwise provided by law.
- (30) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (31) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (32) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (33) Release. In consideration of the full completion of civil penalty and SEP payment(s), and all other undertakings above, CARB hereby releases Polar Service Centers and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (34) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (35) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of seventy-five thousand dollars (\$75,000) per day under Health and Safety Code section 42402.3, for violations of the Cargo Tanks Regulation. (Cal. Code Regs., tit.17, § 94014.) The penalty of \$30,000 over an unspecified number of days of

violation is for noncompliant venting or purging. The per unit penalty in this case is approximately \$30,000 per noncompliant event.

- (36) Emissions. The provisions cited above do prohibit emissions above a specified level as the regulation prohibits all purging or venting of gasoline vapors directly into the atmosphere. Without information on emission rates, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the equipment did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- (37) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.
- (38) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Polar Service Centers and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: _____ /S/ _____

Name: _____ Todd P. Sax, D.Env. _____

Title: _____ Chief, Enforcement Division _____

Date: _____ 3/11/2021 _____

PSC Custom, LLC dba Polar Service Centers:

Signature: _____ /S/ _____

Name: _____ Jerry Cignarella _____

Title: _____ President _____

Date: _____ 3/8/2021 _____