

This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB) 1001 I Street, Sacramento, California 95814, and CARLTON FORGE WORKS (CFW), 7743 East Adams Street, Paramount, California 90723.

## RECITALS

1. The Global Warming Solutions Act of 2006 authorized ARB to adopt regulations to reduce greenhouse gas emissions, including market-based approaches. (Health & Saf. Code §§38560, 38570.) Pursuant to that authority, ARB adopted the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (Regulation), California Code of Regulations (CCR), title 17, §95801 et seq.
2. The Regulation is crucial to reducing greenhouse gas (GHG) emissions, and includes several provisions intended to ensure a fair and functional market.
3. California Health & Safety Code sections 38580 and 42402 et seq. provide that one who violates the Regulation is strictly liable for a penalty of up to \$10,000 per day.
4. ARB contends that CFW failed to comply with the Regulation during 2015 because the company did not have two or more account representatives as required. (See Cal. Code Regs., tit. 17, §95832.) Account representatives enable an entity to perform acts required by the Regulation, including acquiring and surrendering compliance instruments.
5. In reaching this settlement, ARB considered a variety of circumstances, including the nature of the violator's business, the nature, magnitude, and duration of the violation, any harm to the regulatory program, efforts the violator took to prevent the violation and to correct it, and the financial burden to the violator.
6. In this matter, there were mitigating factors, including that the company made efforts to cooperate with ARB's investigation and the company has modest substantive obligations under the Regulation.
7. In order to resolve these alleged violations, CFW has taken, or agreed to take, the actions enumerated below. Further, ARB accepts this Agreement in termination and settlement of this matter.
8. 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 CFW agree as follows.

## TERMS

9. Within 15 business days following both parties' execution of this agreement, CFW shall deliver a cashier's check or money order in the sum of \$130,000.00 made payable to the "Air Pollution Control Fund."

The check should note "CFW 2015 Cap-and-Trade Settlement" in the memo section. Once this Agreement has been fully executed, CFW 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

10. It is further agreed that the penalties described in the prior paragraph are punitive in nature, rather than compensatory, and payable to a governmental unit. Therefore, it is agreed that these penalties are non-dischargeable under 11 United States Code § 523 (a)(7).

11. CFW shall not violate the Regulation, CCR, title 17, section 95801 *et seq.*

12. This Agreement shall apply to and be binding upon CFW, and its officers, directors, 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.

13. This Agreement constitutes the entire agreement and understanding between ARB and CFW concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and CFW concerning the subject matter hereof.

14. 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.

15. 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.

16. 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.

17. 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.

## SB 1402 STATEMENT

18. 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. CFW acknowledges that ARB has complied with section 39619.7 in investigating, prosecuting and settling this case. Specifically, ARB has considered all relevant facts, 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, some of which is also elsewhere in this settlement agreement, 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 penalties in this matter were determined based on all relevant circumstances, including the unique circumstances of this case, giving consideration to the eight factors specified in Health & Safety Code section 42403. Consideration was given to the extent to which the violation deviated from Regulation's requirements, the cause of the violation, and whether the violator gained in any way from the violation. Those circumstances were considered 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 reflects 81 days of noncompliance, at approximately \$1605 per day. The penalty was discounted based on the facts that the company made efforts to cooperate with ARB's investigation, and the company has modest substantive obligations under the Regulation.

**The legal provisions under which the penalty was assessed and why those provisions are appropriate.** The penalty is based on Health & Safety Code section 42402.1 and CCR, title 17, section 96013, the provisions intended to govern violations of the Regulation.

**Whether the governing provisions prohibit emissions at a specified level.** The provisions above do 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.

19. The penalty was based on confidential settlement communications between ARB and CFW. The penalty is the product of an arms length negotiation between ARB and the company and 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, obtain swift compliance with the law and remove any unfair advantage that the company may have secured from its actions.

20. In consideration of the penalty payment, ARB hereby releases CFW and any receivers, trustees, successors and assignees, subsidiary and parent corporations from any claims the ARB may have based on the circumstances described in paragraph 4, above.

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

**California Air Resources Board**

**Carlton Forge Works**

By: \_\_\_\_\_

Ellen M. Peter  
Chief Counsel

Date: \_\_\_\_\_

4/13/2016

By: \_\_\_\_\_

Frank Mello  
Name: Frank Mello  
Title: General Manager

Date: \_\_\_\_\_

3/30/16