

## SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Aeron Arlin Genet, Air Pollution Control Officer of the Santa Barbara County Air Pollution Control District (hereinafter "Control Officer"), and Wine Institute, a nonprofit California corporation located at 425 Market Street, San Francisco, California 94105 (collectively referred to as the "Parties").

### RECITALS

A. On April 26, 2017, Central Coast Wine Services ("Central Coast") filed an application for an authority to construct permit to authorize modifications to its existing winery at 2717 Aviation Way, Santa Maria, California ("Santa Maria Winery") that would allow, relevant to this Settlement Agreement, red and white wine fermentation in 40 existing wine storage tanks known as the "series 400" tanks (hereafter the "Proposed Project").

B. The Proposed Project had a potential to emit reactive organic compounds, a nonattainment pollutant, at the Santa Maria Winery that under District Rule 802 would require Central Coast to apply "best available control technology."

C. Pursuant to Health and Safety Code section 42300, on August 18, 2017, the Control Officer issued Authority to Construct Permit No. 15044 to Central Coast. This permit was based on a memorandum by District Engineering Supervisor David Harris that determined that the best available control technology for the Proposed Project would be either of two control devices, the NohBell NoMoVo and EcoPAS capture and control systems (collectively, the "control systems"), that were already in use at the Central Coast Winery. Because the control systems were in limited use at the Santa Maria Winery, the Harris memorandum concluded they were "achieved in practice," which is one of the criteria in Rule 802(D)(2) for determining best available control technology.

D. On September 15, 2017, the Control Officer issued Authority to Construct Permit No. 15044-01 to Central Coast, which made modifications to the permit issued on August 18, 2017. The modified permit incorporated the achieved-in-practice determination from the August 18, 2017 permit. These two permit actions are collectively referred to as the "Authority to Construct."

E. Pursuant to Health and Safety Code section 42302.1, on September 14, 2017, Wine Institute filed a petition for review of Authority to Construct 15044 with the Santa Barbara County Air Pollution Control District Hearing Board. Wine Institute's Petition sought to contest the Control Officer's determination that the control systems were "achieved in practice." This petition is Hearing Board Case No. 2017-21-AP.

F. On October 6, 2017, Wine Institute filed a petition for review of Authority to Construct No. 15044-01. This petition supplemented the petition filed on September 14, 2017 and is Hearing Board Case No. 2017-24-AP.

G. On October 23, 2017, the Control Officer filed a single Answer to the two petitions referenced above.

H. Pursuant to a stipulation between the Parties approved by the Chair of the Hearing Board, Wine Institute filed its opening brief in this matter on January 9, 2018, the Control Officer filed a response brief on February 26, 2018, and Wine Institute filed its reply brief on March 13, 2018.

I. On March 13, 2018, the Air Resources Board submitted to the Hearing Board a detailed comment letter regarding the Control Officer's determination that the control systems were "achieved in practice." Wine Institute objected that the Air Resources Board's comments constituted a late brief by the Control Officer and should not be considered by the Hearing Board; the Control Officer and the Air Resources Board asserted that the Air Resources Board's comments were timely public comments. The Hearing Board did not rule on Wine Institute's objections or the District's response.

J. On April 17, 2018, the Control Officer filed a response to the Air Resources Board comment letter.

K. On April 18, 2018, Wine Institute filed a response to the Air Resources Board comment letter.

L. Subsequent to the briefing of the case, the Parties have reached an agreement and wish to formally resolve the matter through this Settlement Agreement.

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## **AGREEMENT**

In consideration of the mutual promises, covenants, and other consideration set forth in this Agreement, the Parties agree as follows:

### **Air Pollution Control Officer Covenants**

1. Immediately upon the District's receipt from Central Coast of an application for an amendment to the Authority to Construct, as provided in Paragraph 5, below, the Control Officer will take the following actions:
  - a. Issue a revised Authority to Construct as set forth in Attachment A.
  - b. Include as an attachment to the revised Authority to Construct the revised achieved in practice memorandum as set forth in Attachment E to the Authority Construct. The revised memorandum will include, as set forth in Attachment E to the Authority to Construct, the following:
    - i. A limitation on the determination so that it applies only to closed-top wine fermentation tanks of 30,000 gallons or less;
    - ii. A notation that all fermentation activities at Central Coast's Winery are conducted indoors; and
    - iii. A notation that the control systems have not been used on tanks less than 1,100 gallons in size at Central Coast and, because the District did not do and is not required to do a technical feasibility and cost effectiveness analysis for any part of the "achieved in practice" determination for the Central Coast project subject to BACT, such an analysis has not been done for these tanks.
2. In the event that the revised Authority to Construct permit referenced in Paragraph 1 is invalidated by the Santa Barbara County Air Pollution Control District Hearing Board or a court, the Control Officer will make best efforts within the scope of her legal authority to ensure that the terms of ATC 10544 and 10544-01 will remain in effect.
3. Upon the Control Officer's performance of the covenants in Paragraph 1, above, and Wine Institute's performance of the Covenants described in Paragraph 5, the Control Officer will support a request by Wine Institute pursuant to Paragraph 7, below, to withdraw the petitions in Case Nos. 2017-21-AP and 2017-24-AP.



4. Upon the approval by the Chair, Vice Chair or Hearing Board of Wine Institute's withdrawal of its petitions pursuant to Paragraph 7, below, the Control Officer will submit a revised achieved in practice determination consistent with the limitations described in Paragraph 1(b)(i), above, to the Air Resources Board for inclusion on the best available control technology clearinghouse website, and request that the existing achieved in practice determinations regarding the control systems be removed from the clearinghouse website.

#### **Wine Institute Covenants**

5. Wine Institute shall arrange to have Central Coast formally apply for modifications to its current Authority to Construct requesting the revisions described in Paragraph 1 above. Wine Institute shall pay or cause to be paid all fees required by District Rules associated with the application.

6. Wine Institute shall not appeal or in any way contest through comments or filing of appeals, litigation or other process, whether directly by Wine Institute or one of its members, the issuance of the Authority to Construct as set forth in Attachment A.

7. Upon the Control Officer's performance of the covenants described in Paragraph 1, above, Wine Institute shall formally request withdrawal of its petitions in Hearing Board Case Nos. 2017-21-AP and 2017-24-AP.

8. After full performance of the covenants and conditions described herein, Wine Institute shall not contest in any legal proceeding, whether administratively or in any court of law, any determination by the Control Officer in future permit actions, within the Santa Barbara County Air Pollution Control District and subject to New Source Review, that the control systems are best available control technology for the class and category of wine fermentation tanks described in Paragraph 1.b. above. This Covenant shall survive the full performance of this Settlement Agreement.

#### **Other Provisions**

9. **Third-Party Beneficiary.** In making this Agreement, the Parties intend to benefit Central Coast Wine Services, and it shall have the right to enforce all of the provisions of this Agreement.

10. **No Admissions.** Nothing in this Agreement shall be deemed an admission of any issue of fact or law, except for the limited purpose of enforcing this Agreement.

11. **Modification.** This Agreement may not be amended or modified except by a written instrument executed by both Parties.

12. **Choice of Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of California, without regard to its choice-of-law principles.

13. **Costs and Expenses.** Except as expressly set forth in Paragraph 5, above, no payments are required by this Agreement. Each Party shall bear its own legal costs and expenses associated with this matter, including without limitation, all costs and expenses which it has incurred prior to the date of this Agreement.

14. **Remedies.** Provided the Parties have fully performed the covenants of Paragraphs 1 and 5, above, the Parties agree that there is no adequate remedy at law for any breach of the covenants set forth in Paragraphs 2, 3, 4, 6, 7 and 8, above; therefore, those covenants shall be subject to specific performance.

15. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. For purposes of this Agreement, signatures provided by facsimile or e-mail shall have the same force and effect as original signatures.

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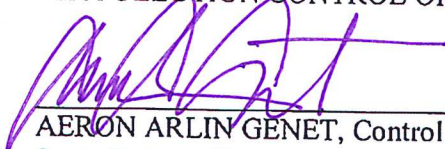
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16. **Authority.** The signatories to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with.

Therefore, this Agreement is made this 5<sup>th</sup> day of June, 2018, in Santa Barbara, California.

AIR POLLUTION CONTROL OFFICER

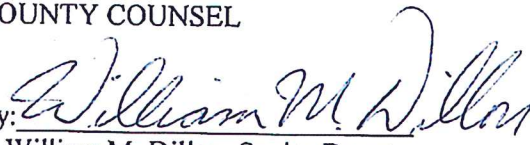
  
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