

# SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB") 1001 I Street, Sacramento, California 95814, and IMPERIAL VALLEY FOODS, INC. (hereinafter "IVF"), 233 Paulin Avenue #5311, Calexico, California 92231.

## I. RECITALS

- (1) California Health and Safety Code sections 39650-39675 (HSC §§ 39650-39675) mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive ten-year scientific assessment process, CARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use on-road diesel vehicles are powered by diesel fueled engines that emit toxic PM. On-road vehicles are controlled under the Truck and Bus regulation, as codified in the California Code of Regulations, title 13, section 2025 (13 CCR § 2025).
- (2) 13 CCR § 2025(x)(2) provides that "Any in-state or out-of-state motor carrier, California broker, or any California resident, who operates or directs the operation of any vehicle subject to this regulation shall verify that each hired or dispatched vehicle is in compliance with the regulation and comply with the record keeping requirements of section 2025(s)(4)."
- (3) Failure to comply with the requirements of 13 CCR § 2025 is a violation of state law resulting in penalties. HSC §§ 39674(a) and (b) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars (\$1,000) or ten thousand dollars (\$10,000), respectively, for each day in which the violation occurs.
- (4) CARB Enforcement Division has documented that IVF failed to verify that each hired or dispatched vehicle was in compliance with the Truck and Bus Regulation and to comply with the record keeping requirements.
- (5) Transport Refrigeration Units (TRU) are powered by diesel fueled engines that emit this toxic PM. TRUs are regulated under the Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units and TRU Generator Sets, and Facilities Where TRUs Operate (TRU ATCM) as codified in 13 CCR § 2477.1 through 2477.21.
- (6) 13 CCR § 2477.5(a) provides that no owner/operator shall operate a TRU or TRU generator (gen) set in California unless it meets in-use performance standards established in § 2477.5.

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- (7) CARB Enforcement Division has documented that IVF failed to bring the TRUs it operates in California into compliance with the in-use performance standards before the deadlines set forth in the regulation.
- (8) Failure to bring the TRU fleet in compliance with applicable in-use performance standards are violations of state law resulting in penalties. HSC § 39674 authorizes civil penalties of up to ten thousand dollars (\$10,000) for each day that the violation occurs.
- (9) In order to resolve these alleged violations, IVF has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, CARB accepts this Agreement in termination and settlement of this matter.
- (10) 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, CARB and IVF agree as follows:

## II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against IVF for the alleged violations referred to above, and IVF's payment of the penalties set forth in Section 1 below, CARB and IVF agree as follows:

- (1) Upon execution of this Agreement, IVF shall pay a civil penalty of \$6,500. Payment shall be made in two payments as described below, beginning on **August 20, 2019**.

<b>Payment Due Date:</b>	<b>In the Amount of and Payable to:</b>
8/20/2019	<b>\$3,250.00 the Air Pollution Control Fund</b>
10/22/2019	<b>\$3,250.00 the Air Pollution Control Fund</b>

The Parties shall exchange signed copies of this Agreement. This Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement. **Please send the original signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:**

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**Alfonso Arambula  
Air Pollution Specialist  
California Air Resources Board  
Enforcement Division  
P.O. Box 2815  
Sacramento, California 95812**

**Please submit each payment by the applicable payment due date along with the corresponding “Settlement Agreement Payment Transmittal Form” (Attachment A) to:**

**California Air Resources Board  
Accounting Office  
P.O. Box 1436  
Sacramento, California 95812-1436**

- (2) Effect of Untimely Payment. If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable. In addition, if the Attorney General files a civil action to enforce this settlement agreement, IVF shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney’s fees, and costs.
- (3) It is agreed that if IVF, including its subsidiary or parent company, at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving IVF, its subsidiary, or parent company, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against IVF, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of IVF’s, its subsidiary, or parent company’s properties, or if any deposit account or other property of IVF, its subsidiary, or parent company be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or IVF, its subsidiary, or parent company takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.
- (4) It is further agreed that the penalties described in “Terms and Release”, paragraph 1 are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish IVF for violations of state environmental statutes, and these penalties are payable to and for the benefit of CARB, a governmental unit. Therefore, it is agreed that these penalties imposed on IVF by CARB arising from the facts described in recital paragraphs (1) through (8) are non-dischargeable under 11 United States Code § 523 (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine,

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- 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.
- (5) IVF shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
  - (6) IVF shall remain in compliance with the ECL regulation as codified in 13 CCR § 2183.
  - (7) IVF shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in 13 CCR § 2485, within 45 days of this Agreement.
  - (8) IVF shall not violate the Truck and Bus Regulation as codified in 13 CCR § 2025.
  - (9) IVF shall verify that each hired or dispatched vehicle is in compliance with the Truck and Bus Regulation.
  - (10) IVF shall submit proof of compliance with the Truck and Bus regulation (as codified in 13 CCR § 2025(x)(2)) for the years 2019 and 2020 to CARB by January 31 of the following year. **The correspondence shall be addressed to the attention of Mr. Alfonso Arambula at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.** CARB reserves the right to visit any IVF fleet location at any time to conduct compliance audits for the compliance requirements codified in 13 CCR § 2025(x)(2), or any other applicable CARB program.
  - (11) IVF shall not violate TRU ATCM as codified in 13 CCR § 2477.
  - (12) IVF shall submit the proof of reporting in ARBER to Mr. Alfonso Arambula, Air Pollution Specialist, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812 for the years 2019 and 2020 by January 31 of the following year.
  - (13) This Agreement shall apply to and be binding upon IVF, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
  - (14) This Agreement constitutes the entire agreement and understanding between CARB and IVF concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between CARB and IVF concerning the subject matter hereof.

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- (15) 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.
- (16) 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.
- (17) 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.
- (18) 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.
- (19) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires CARB to provide information on the basis for the penalties it seeks (HSC § 39619.7). This 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 HSC §§ 42403 and 43024.

#### Truck and Bus Violations

The per unit penalty for the Truck and Bus violations involved in this case is a maximum of \$1,000 per vehicle per day for strict liability violations or \$10,000 per vehicle per day for negligent or intentional violations.

The penalty obtained for the Truck and Bus violation involved in this case for failure to verify that each hired or dispatched vehicle was in compliance with the Truck and Bus Regulation is \$5,000.00 for five hired fleets, in 2017 and 2018, determined to be in compliance with the Truck and Bus regulation, or \$1,000.00 per hired fleet.

#### TRU Violations

The per unit penalty for the TRU violations involved in this case is a maximum of \$1,000 per unit per day for strict liability violations or \$10,000 per vehicle per day for negligent or intentional violations pursuant to HSC § 39674. The penalty

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obtained for the TRU violations involved in this case is \$1,500 for three noncompliant TRUs operated by IVF or \$500.00 for each violation.

The penalty was discounted based on the fact that this was a first time violation and the violator made diligent efforts to comply and to cooperate with the investigation.

**The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.**

### Truck and Bus Violations

The penalty provision being applied for the Truck and Bus Regulation (13 CCR § 2025) violations in this case is HSC § 39674 because the Truck and Bus regulation is an ATCM adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because IVF failed to verify that each hired or dispatched vehicle was in compliance with the Truck and Bus regulation and failed to comply with the record keeping requirements.

### TRU Violations

The penalty provision being applied for the TRU ATCM (13 CCR § 2477) violations (including registration and labeling) is HSC § 39674 because the TRU rule is an ATCM adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and IVF, as an owner of TRUs, failed to bring all TRUs in its fleet into compliance by the deadlines set forth in the TRU ATCM.

**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.**

### Truck and Bus Violations

The provisions cited above do not prohibit emissions above a specified level.

### TRU Violations

The provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the noncompliant TRUs involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (20) IVF acknowledges that CARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, CARB has considered all relevant facts,

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including those listed at HSC § 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

- (21) 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. Penalties in future cases might be smaller or larger on a per unit basis.
- (22) The penalty was based on confidential settlement communications between CARB and IVF that CARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between CARB and IVF and reflects CARB's assessment of the relative strength of its case against IVF, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that IVF may have secured from its actions.
- (23) Now therefore, in consideration of the payment on behalf of IVF to the Air Pollution Control Fund, CARB hereby releases IVF and their principals, officers, agents, predecessors and successors from any and all claims, CARB may have or have in the future based on the circumstances described in paragraphs (1) through (8) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

**California Air Resources Board**

**Imperial Valley Foods, Inc.**

Signature:                   /S/                  

Signature:                   /S/                  

Print Name: Todd P. Sax, D.Env

Print Name: Fernando Caballero

Title: Chief, Enforcement Division

Title: President

Date: 8/30/19

Date: 7/10/19