

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 Albertsons Companies, Inc. (Albertsons), with its principal location at 250 E. Parkcenter Boulevard, Boise, Idaho 83706 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) **Purpose.** The Global Warming Solutions Act of 2006 mandates CARB to adopt regulations to reduce greenhouse gas emissions and to enforce those regulations. (Health & Saf. Code §§ 38560, 38562, and 38580). CARB is also mandated to reduce hydrofluorocarbon emissions by 40% below 2013 levels by 2030. (Health & Saf. Code § 39730.5.)
- (2) **Regulation.** CARB adopted the regulation, *Management of High-Global Warming Potential Refrigerants for Stationary Sources* (RMP Regulation) to reduce hydrofluorocarbon emissions from stationary, non-residential refrigeration equipment and from the installation and servicing of stationary refrigeration and air-conditioning appliances using high global warming potential (high-GWP) refrigerants. (Cal. Code Regs., tit.17, §§ 95380-95398.)
- (3) **Regulatory Provisions.** Any person who owns or operates a stationary refrigeration system; or installs, repairs, maintains, services, replaces, recycles, or disposes of stationary refrigeration or air-conditioning appliances; or distributes or reclaims refrigerants with high-GWP, must comply with the applicable requirements of the RMP Regulation. (Cal. Code Regs., tit.17, § 95381.)
- (4) **Penalty Provisions.** Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to eleven thousand seven hundred ten dollars (\$11,710.00 USD) for strict liability violations, respectively, for each day in which the violation occurs. (Cal. Code Regs., tit.17, § 95380 et seq.; Health & Saf. Code §§ 38580, 42400 et seq., 42402 et seq., and 42410.)

CASE BACKGROUND

- (5) **Corporate Entity.** At all relevant times, Albertsons was organized under the laws of Delaware and conducted business in the State of California.
- (6) **Allegations.** CARB issued a Notice of Violation (NOV) #2022-SAFEW-1352 to Albertsons on January 31, 2023 alleging Albertsons violated the RMP regulation by owning or operating a stationary refrigeration system, as defined by the RMP Regulation, with a full charge of greater than 50 pounds, and failing to ensure that all detected refrigerant leaks are repaired within 14 days of its detection by a certified technician (Cal. Code Regs., tit. 17, § 95386(a)). As described in NOV #2022-SAFEW-1352, CARB alleges that Albertsons Store 2136 failed to repair a

refrigerant leak within the 14-day timeframe for a leak detected on January 18, 2022.

- (7) CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against Albertsons for each day for each violation.
- (8) Acknowledgment. Albertsons admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (9) 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, Albertsons 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 Albertsons for the alleged violations referred to above in the Legal Background and Case Background, and Albertson's agreement to complete all terms and conditions set forth below, CARB and Albertsons agree as follows:

- (10) Settlement Amount. Albertsons shall pay a civil penalty of four thousand dollars (\$4,000.00 USD). Albertsons shall make all payments within 30 calendar days from the date CARB notifies Albertsons of the full execution of the Settlement Agreement.
- (11) Civil Penalty Payment Method. Albertsons shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to the California Air Resources Board, using instructions provided separately by CARB in a Payment Transmittal Form. Albertsons is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. At the time of payment, Albertsons shall email proof of payment, including the Payment Transmittal Form, to the email address provided in Paragraph 12 (Notices). 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 Albertsons in accordance with Paragraph 12 (Notices).

- (12) Documents. Albertsons shall promptly email the signed and dated Settlement Agreement directly to the CARB Investigator managing the settlement; or may mail the signed and dated Settlement Agreement to the address provided in Paragraph 12 (Notices).
- (13) 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
Field Operations Branch
Short Lived Climate Pollutant Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov ([Proof of Payment](#))

As to Albertsons:

Albertsons Companies, Inc.
5858 Stoneridge Mall Rd.
Pleasanton, California 94588
Angela.Levin@albertsons.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.

- (14) Repeat Violations. Albertsons agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (15) 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 7 pages and 32 paragraphs.
- (16) Binding Effect. This Settlement Agreement binds Albertsons, 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.

- (17) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (18) 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. Upon timely payment of the penalty contemplated by paragraph (29) below, the obligations of the parties shall be deemed complete under this agreement.
- (19) 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.
- (20) 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.
- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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.

- (25) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (26) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (27) Release. In consideration of full payment of the civil penalty and all other undertakings above, CARB hereby releases Albertsons 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.
- (28) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (29) Per Unit Penalty. The per unit penalty in this case is a maximum of eleven thousand seven hundred ten dollars (\$11,710.00 USD) per day under Health and Safety Code section 38580 for violations of the RMP Regulation (Cal. Code Regs., tit.17, § 95380 et seq.) The penalty of four thousand dollars (\$4,000.00 USD) for eight days in violation. The per unit penalty in this case is five hundred dollars (\$500.00 USD) per noncompliant day.
- (30) Emissions. The provisions cited above do not prohibit emissions above a specified level. Without more information, it is not practicable to quantify the excess emissions. However, since CARB has alleged that Albertsons did not meet the regulatory requirements, all of the emissions from it are alleged to be excess and illegal.
- (31) 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.

(32) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Albertsons or confidential settlement communications.

(33) Effect of Settlement/Reservation of Rights. The following shall apply:

- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Albertsons with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Albertsons with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Albertsons to CARB.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
 - (v) Any criminal liability.
 - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Albertsons shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.

- (d) This Settlement Agreement does not limit or affect the rights of Albertsons or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Albertsons, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Albertsons is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Albertsons's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Albertsons's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Ellen M. Peter

Title: Chief Counsel

Date: April 28, 2023

Albertsons Companies, Inc.

Signature: /S/

Name: Angela Levin

Title: Vice President Regulatory Law

Date: April 26, 2023