

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB" or "ARB"), with its principal office at 1001 I Street, Sacramento, California, 95814 and GOLDEN STATE SUPPLY LLC (hereinafter "GSS") with its principal place of business at 5008 Airport Rd NW, Roanoke, Virginia, collectively, "the Parties." This Agreement shall be effective on the date last executed below ("Effective Date").

RECITALS

1. California Code of Regulations, title 17, section 95362(a) provides, in pertinent part that "[o]n or after January 1, 2010, no person may sell, supply, offer for sale, or manufacture for sale in California automotive refrigerant in a small container unless that automotive refrigerant in a small container has been certified for use and sale by the Air Resources Board and is covered by an Executive Order issued pursuant to this subarticle."
2. California Code of Regulations, title 17, section 95362(b) states, "The criteria for obtaining certification, including all procedures for determining compliance with applicable test procedures, for automotive refrigerant in a small container sold, supplied, offered for sale, or manufactured for sale in California between January 1, 2010 and April 12, 2017 are set forth in "Certification Procedures for Small Containers of Automotive Refrigerant," adopted on July 20, 2009, and last amended on January 5, 2010, which is incorporated by reference herein."
3. California Code of Regulations, title 17, section 95362(c) states, "The criteria for obtaining certification, including all procedures for determining compliance with applicable test procedures, for automotive refrigerant in a small container sold, supplied, offered for sale, or manufactured for sale in California on or after April 13, 2017, are set forth in "Certification Procedures for Small Containers of Automotive Refrigerant," adopted on July 20, 2009, and last amended on January 17, 2017, which is incorporated by reference herein."
4. California Code of Regulations, title 17, section 95367(a)(1) provides, in pertinent part, that "[u]pon request from ARB, each retailer must report sales data [annually] of the number of small containers of automotive refrigerant sold and the number of used small containers of automotive refrigerant returned by consumers. The sales data and returned can data must be reported for each SKU, for each manufacturer or distributor, for each month, and as totals for each annual reporting period."
5. California Code of Regulations, title 17, section 95368(a) provides, in pertinent part, that "[p]enalties may be assessed for any violation of this subarticle pursuant to Health and Safety Code section 38580. Each day during any portion of which a violation occurs is a separate offense."

SETTLEMENT AGREEMENT AND RELEASE
CARB and Golden State Supply LLC
Page 2 of 8

6. Health and Safety Code section 38580(b)(1) provides, in pertinent part that “[a]ny violation of any rule, regulation, order, emission limitation, emissions reduction measure, or other measure adopted by the state board pursuant to this division may be enjoined pursuant to Section 41513, and the violation is subject to those penalties set forth in Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.”
7. Health and Safety Code section 42402(b)(1) states, “Any person who violates any provision of this part, any order issued pursuant to Section 42316, or any rule, regulation, permit or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than ten thousand dollars (\$10,000).”
8. GSS is a retailer and wholesaler of automotive parts, including, but not limited to, small containers of automotive refrigerant.
9. On April 27, 2017, CARB received a self-disclosure letter sent on behalf of GSS that stated, inter alia, that the company had sold in California small containers of automotive refrigerant that were not compliant with provisions of recital paragraphs 1 through 3 and had not been issued CARB Executive Orders.
10. In the self-disclosure letter, GSS stated that it submitted its 2015 annual report to CARB on March 1, 2016, pursuant to the provisions in recital paragraph 4. The data in the report excluded certain uncertified containers that were sold in California. This was an unintentional violation.
11. CARB alleges that GSS’ 2014 annual report was also incorrectly generated via this in-house register code given that GSS stated in the self-disclosure letter that it did not change its reporting methodology using the code until its 2016 annual report was submitted to CARB.
12. GSS self-disclosed that it sold 265 uncertified small containers during calendar years 2014 through 2016.
13. CARB alleges that GSS’ 2014 and 2015 annual reports were incorrectly submitted in violation of California Code of Regulations, title 17, section 95367(a)(1).
14. CARB alleges that supplying, selling, and offering for sale uncertified containers of automotive refrigerant by GSS in California was unlawful and in violation of California Code of Regulations, title 17, section 95362(a).
15. GSS is a limited liability corporation with its business address in Roanoke, Virginia.
16. GSS promptly and fully cooperated with CARB throughout its investigation.

SETTLEMENT AGREEMENT AND RELEASE

CARB and Golden State Supply LLC

Page 3 of 8

17. CARB alleges that if the facts described in recital paragraphs 1 through 14 were proven, civil penalties could be imposed against GSS as provided in California code of Regulations, title 13, section 95368, and Health and Safety Code section 42402 et seq.
18. GSS admits the facts described in recital paragraphs 1 through 14, but denies any liability arising thereunder.
19. GSS is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with CARB. CARB accepts this Agreement in termination of this matter. Accordingly, the Parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

TERMS AND RELEASE

In consideration of CARB not filing a legal action against GSS for the violations alleged above, and in consideration of the other terms set out below, CARB and GSS agree as follows:

1. As a condition of this Agreement, GSS shall pay the total sum of twenty-four thousand four hundred sixty-one dollars (\$24,461) as a civil penalty payable to the **California Air Pollution Control Fund**. This penalty amount shall be paid in full within thirty (30) days of the Effective Date of this Agreement.

GSS shall mail the signed Agreement and any other required documentation per the terms of this Agreement to:

**Mr. Dean Hermano
Staff Air Pollution Specialist
California Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, California 91731**

GSS shall send the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

**California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812-1536**

2. Effect of Untimely Payment. If the penalty in Terms and Release paragraph 1 is more than fifteen (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 Agreement, GSS 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 GSS at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving GSS, 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 GSS as a result of such adverse event, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of GSS' properties, or if any deposit account or other property of GSS be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or GSS takes any action to authorize any of the foregoing, the entire remaining penalty balance becomes immediately due and payable without notice or demand.
4. It is agreed that the penalty described in Terms and Release paragraph 1 is not compensatory in nature. Furthermore, the penalty is intended to deter violations of state environmental statutes, and this penalty is payable to and for the benefit of CARB, a governmental unit. Therefore, it is agreed that this penalty imposed on GSS by CARB arising from the facts described in recital paragraphs 1-16 are nondischargeable under 11 U.S.C § 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 benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.
5. GSS hereafter shall supply, distribute, offer for sale, and sell in California only small containers of automotive refrigerant that are certified pursuant to California Code of Regulations, title 17, section 95362 or otherwise in compliance with any other applicable requirements.
6. GSS hereafter shall completely and accurately report sales data annually of the number of small containers of automotive refrigerant sold and the number of used small containers of automotive refrigerant returned by consumers pursuant to California Code of Regulations, title 17, section 95367(a)(1). GSS shall report the sales data and returned can data for each SKU, for each

manufacturer or distributor, for each month, and as totals for each annual reporting period.

7. This Agreement shall apply to and be binding upon GSS and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and predecessors and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
8. Now, therefore, contingent on the payment in full by GSS to the California Air Pollution Control Fund in the amount specified above, CARB hereby releases and forever discharges GSS and its shareholders principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors ("the Released Parties") from any and all actions, causes of actions, suits, claims, and demands whatsoever in law or equity for any and all violations of California Code of Regulations, title 17, section 95360 et seq. that CARB may have against the Released Parties based on the facts and allegations described in recital paragraphs 1 through 16 above.
9. This Agreement constitutes the entire agreement and understanding between CARB and GSS concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between CARB and GSS concerning these claims.
10. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
11. Advice of Counsel. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
12. 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.
13. 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 to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.
14. Waiver. The failure of any Party to enforce any provision of this 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 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 Agreement or otherwise provided by law.

15. Captions. The captions by which the sections and subsections of this Agreement are identified are for convenience only, and shall have no effect whatsoever upon their interpretation.
16. This Agreement may be executed by facsimile and in multiple counterparts, and the counterparts shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.
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.

18. SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires CARB to provide information on the basis for the penalties it seeks. This required information, which is provided throughout this 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 Health and Safety Code section 43024.

Health and Safety Code 42402(b)(1) allows strict liability penalties of up to \$10,000 for violations of the regulation for small containers of automotive refrigerant. The per unit penalty in this case is a maximum of \$10,000 for each report incorrectly or incompletely submitted by GSS for the 2014 and 2015 calendar years, resulting in a penalty of \$20,000.

In addition, the uncertified small containers were determined by CARB to produce 188 pounds of excess 1,1,1,2-Tetrafluoroethane (HFC-134a) emissions resulting in an additional civil penalty of \$4,461.

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

CARB alleges that the penalty provision being applied in this case, Health and Safety Code section 42402 et seq., is appropriate because GSS submitted inaccurate or incomplete annual reports to CARB in violation of California Code of Regulations, title 17, section 95367(a)(1), and also sold, and/or offered for sale, the subject non-California certified small containers of automotive refrigerant in violation of California Code of Regulations, title 17, section 95362(a). The penalty

provisions of Health and Safety Code section 42402 et seq. are referenced in Health and Safety Code section 38580, the latter of which is cited in the regulation for small containers of automotive refrigerant pursuant to California Code of Regulations, title 13, section 95368(a).

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.

The cited provisions do prohibit the leakage of HFC-134a emissions above a specified level in regulated small containers of automotive refrigerant. It was practicable in this case to quantify the emissions from GSS' uncertified containers of automotive refrigerant because the company provided their specific product formulations and sales data. Based upon this information, the 265 subject containers were calculated by CARB to produce 188 pounds of excess HFC-134a emissions in California.

19. GSS acknowledges that CARB has complied with SB 1402 in prosecuting and settling this case. Specifically, CARB has considered all relevant facts, including those listed at Health and Safety Code section 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
20. 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 case negotiations, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain period of time, considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.
21. The penalty in this case was based in part on confidential business information provided by GSS that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and GSS that CARB does not retain in the ordinary course of business either. The penalty also reflects CARB's assessment of the relative strength of its case against GSS, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that GSS may have secured from its alleged actions.

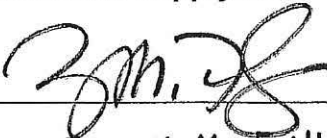
23. The undersigned represent that they have full power and authority to enter into this Agreement.

California Air Resources Board

By:  Dr Todd

Name: Dr. Todd P. Sax
Title: Chief, Enforcement Division
Date: 01/04/19

Golden State Supply LLC

By: 

Name: TAMMY M. FINLEY
Title: EXECUTIVE VICE PRESIDENT, GENERAL COUNSEL
Date: 12/20/18