

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 TYSON FOODS INCORPORATED (hereinafter "TYSON FOODS"), 2210 Don Tyson Parkway, Springdale, Arkansas 72762-6999.

I. RECITALS

- (1) 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 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 (\$1,000.00) or ten thousand dollars (\$10,000.00), respectively, for each day in which the violation occurs.
- (4) CARB Enforcement Division alleges that TYSON FOODS is a "motor carrier" under 13 CCR § 2025(d)(41), and that TYSON FOODS failed to verify that each hired or dispatched vehicle was in compliance with the Truck and Bus regulation.
- (5) TYSON FOODS denies that it has violated the Truck and Bus Regulation. Nonetheless, in order to resolve all alleged violations, TYSON FOODS has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, CARB accepts this Agreement in termination and settlement of this matter.
- (6) In consideration of the foregoing, and of the promises and information 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 Agreement. Specifically, CARB and TYSON FOODS agree as follows:

II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against TYSON FOODS for the alleged violations referred to above in recitals (1) through (5), and TYSON FOODS' payment of the penalties and funding of the Supplemental Environmental Project (SEP) set forth below, CARB and TYSON FOODS agree as follows:

- (1) TYSON FOODS has agreed to undertake a SEP as described in Attachment B – SUPPLEMENTAL ENVIRONMENTAL PROJECT AGREEMENT – Fresno TREES SEP, (SEP Agreement), to offset a portion of the penalty, consistent with CARB's SEP Policy. Pursuant to this Agreement, TYSON FOODS shall make payments according to the schedule below.
- (2) TYSON FOODS has agreed that by funding the Fresno TREES SEP, they will not receive any direct or indirect financial benefit, and that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of a CARB enforcement action.
- (3) Upon agreeing to the terms set forth in the SEP Agreement, and funding the Fresno TREES SEP, TYSON FOODS is released of all liabilities as they relate to the Fresno TREES SEP as reflected in this underlying Settlement Agreement.
- (4) In the event the SEP is not fully implemented in accordance with the terms of the SEP Agreement, CARB (as the third-party beneficiary) shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount waived based on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, TYSON FOODS assigns any and all rights against the SEP implementer to CARB.
- (5) Upon execution of this Agreement, TYSON FOODS shall pay a civil penalty of \$169,500.00. Payment shall be made as follows within 10 days of the Agreement being fully executed.
 - \$84,750.00 payable to **Tree Fresno**
 - \$84,750.00 payable to the **Air Pollution Control Fund**
- (6) **Effect of Untimely Payment.** If any payment 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 settlement agreement, TYSON FOODS shall pay all reasonable costs of investigating and prosecuting

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the action, including expert fees, reasonable attorney's fees, and costs if approved by the Court.

- (7) The signed settlement agreement and any future mailings or documents per the terms of this Settlement Agreement shall be mailed to:

Mr. Ryman Simangan
Air Pollution Specialist
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, California 95812

For payments made to the Air Pollution Control Fund, please send the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A -1) to:

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

For payments made to the Tree Fresno, please send the payment along with the attached "Supplemental Environmental Project Payment Transmittal Form" (Attachment A - 2) to:

Tree Fresno
For: Fresno TREES
3150 E. Barstow Avenue
Fresno, CA 93740

In addition, a copy of the payment check made to Tree Fresno shall be mailed to:

Mr. Ryman Simangan
Air Pollution Specialist
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, California 95812

- (8) TYSON FOODS has agreed to undertake a SEP as described in Attachment B – "SUPPLEMENTAL ENVIRONMENTAL PROJECT AGREEMENT – Fresno TREES SEP", ("SEP Agreement"), to offset a portion of the penalty, consistent

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with CARB's SEP Policy. Pursuant to this Agreement, TYSON FOODS shall make payments according to the schedule above in (5).

- (9) 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 TYSON FOODS for alleged 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 TYSON FOODS by CARB arising from the facts alleged in recital paragraphs (1) through (5) 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, 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.
- (10) TYSON FOODS shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025. Within 60 days of the execution of this Agreement, TYSON FOODS shall submit (1) a compliance plan to demonstrate TYSON FOODS' verification process of hiring vehicles subject to the Truck and Bus regulation pursuant to 13 CCR § 2025(x)(2) and (2) evidence of TYSON FOODS' verification of compliance of its hired vehicles in 2018 to Mr. Ryman Simangan, Air Pollution Specialist, CARB Enforcement Division, P.O. Box 2815, Sacramento, California 95812. The compliance plan and evidence of verification in 2018 shall be subject to CARB approval. This term shall not be deemed satisfied until CARB has approved the submissions by TYSON FOODS, which approval shall not be unreasonably withheld. The compliance plan shall include the following information:
- a. Dates by which annual verifications of compliance will take place beginning in 2019;
 - b. The form of the verification; and
 - c. The actions TYSON FOODS shall take if compliance cannot be verified.
- (11) This Agreement shall apply to and be binding upon TYSON FOODS, 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. Upon CARB' approval of the completion of the requirements in Section II, paragraphs (5) and (10), TYSON FOODS shall be in compliance with the terms of this agreement.
- (12) This Agreement constitutes the entire agreement and understanding between CARB and TYSON FOODS concerning the subject matter hereof, and

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supersedes and replaces all prior negotiations and agreements between CARB and TYSON FOODS concerning the subject matter hereof.

- (13) 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.
- (14) 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.
- (15) 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.
- (16) 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.
- (17) 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 alleged Truck and Bus violations involved in this case is a maximum of \$1,000.00 per vehicle per day for strict liability violations or \$10,000.00 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 \$145,500 for 194 fleets hired in 2014 and 2015 for which Tyson conducted insufficient after-the-fact measures to verify compliance, or \$750.00 per hired fleet, and \$24,000 for 96 fleets hired in 2016 for which Tyson conducted timely yet insufficient measures to verify compliance, or \$250.00 per hired fleet.

The penalty was discounted based on the fact that this was a first-time violation and the violator made efforts to comply with the broker verification requirement in 13 CCR § 2025 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 Airborne Toxic Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because CARB alleges that TYSON FOODS failed to verify that each hired or dispatched vehicle was in compliance with the Truck and Bus regulation.

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

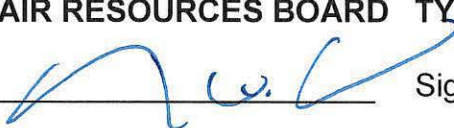
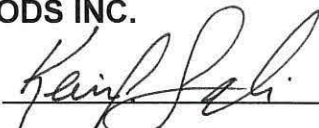
The provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the noncompliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (18) TYSON FOODS acknowledges that CARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, CARB has considered all relevant facts, 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.
- (19) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from the alleged 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.
- (20) The penalty was based on confidential settlement communications between CARB and TYSON FOODS that CARB does not retain in the ordinary course of

business. The penalty is the product of an arm's length negotiation between CARB and TYSON FOODS and reflects CARB's assessment of the relative strength of its case against TYSON FOODS, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that TYSON FOODS may have secured from its actions.

- (21) The parties shall exchange signed copies of this Agreement. 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.
- (22) Now therefore, in consideration of the payment on behalf of TYSON FOODS to the Air Pollution Control Fund and the Tree Fresno, CARB hereby releases TYSON FOODS 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 (5) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

CALIFORNIA AIR RESOURCES BOARD TYSON FOODS INC.

Signature: <u></u>	Signature: <u></u>
Print Name: <u>Richard W. Corey</u>	Print Name: <u>Kevin J. Igli</u>
Title: <u>Executive Officer</u>	Title: <u>SVP & Chief Environmental Officer</u>
Date: <u>10/1/2015</u>	Date: <u>9/19/2018</u>