

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is between the State of California Air Resources Board (ARB) with its principal office at 1001 "I" Street, Sacramento, California 95814, and Windsor Quality Foods, 2395 American Avenue, Hayward, California 94545.

### RECITALS

1. The Global Warming Solutions Act of 2006 authorizes ARB to adopt regulations to reduce greenhouse gas emissions (Health & Safety Code section 38530). Pursuant to that authority, ARB adopted the Regulation for the Management of High Global Warming Potential (GWP) Refrigerants for Stationary Sources (RMP Regulation), California Code of Regulations, title 17, section 95380, et seq., (17 CCR § 95380, et seq.) which became effective on November 19, 2010.
2. The RMP Regulation establishes registration, reporting, leak inspection, repair and recordkeeping requirements applicable to owners of stationary refrigeration systems with a full charge of greater than 50 pounds of high GWP refrigerants (17 CCR §§ 95383, 95385, 95386, 95388 and 95389).
3. The RMP Regulation requires owners of stationary refrigeration systems with a full charge of greater than 2,000 pounds of high GWP refrigerants to register by March 1, 2012 (17 CCR § 95383).
4. The RMP Regulation requires owners of stationary refrigeration systems with a full charge of greater than 2,000 pounds of high GWP refrigerants to file an annual report for the previous year by March 1 each year beginning in March 1, 2012 (17 CCR § 95388).
5. The RMP Regulation requires owners of a stationary refrigeration system with a full charge of greater than 2,000 pounds of high GWP refrigerants to install an automatic leak detection system by January 1, 2012, if the refrigeration system(s) operates year-round, or is intended to be operated year-round, if the refrigerant circuit is located entirely within an enclosed building or structure, or if the compressor, evaporator, condenser, or any other component of the refrigeration system(s) with a high potential for a refrigerant leak is located inside an enclosed building or structure (17 CCR § 95385(a)(2)).
6. Windsor Quality Foods owns and operates one or more stationary refrigeration systems with a full charge of greater than 2,000 pounds of a high GWP refrigerant that is operated year round, or is intended to operate year round, in

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which all or part of the refrigeration system is located within an enclosed building or structure.

7. ARB alleges that Windsor Quality Foods violated the RMP Regulation by (a) failing to submit one or more complete and accurate annual reports by the submittal date in accordance with the RMP Regulation, (b) failing to retain required records in accordance with the RMP Regulation, and (c) failing to install an automatic leak system on one or more stationary refrigeration systems.
8. Windsor Quality Foods admits to the above allegations.
9. The RMP Regulation provides that each day or portion thereof that any leak inspection or leak repair is not completed after the date the leak inspection or leak repair is required to be completed, or each day or portion thereof that any registration, report, or plan required by the RMP Regulation remains unsubmitted, is submitted late, or contains incomplete or inaccurate information, shall constitute a single, separate violation. (17 CCR § 95395(b)).
10. Violations of the RMP Regulation are a violation of State law. Health and Safety Code sections 38580 and 42400, et seq., authorize strict liability penalties not to exceed \$10,000 per day, for each day that the violation occurs.
11. ARB and Windsor Quality Foods desire to resolve these violations completely under the terms of this Agreement, in lieu of litigation. To resolve these violations, Windsor Quality Foods agrees to take the actions enumerated below under "TERMS AND CONDITIONS."

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**TERMS AND CONDITIONS**

12. Upon execution of this Agreement, Windsor Quality Foods shall pay a civil penalty and fund a SEP in the total amount of \$60,000. Payment shall be made as described below, and no later than December 15, 2017.

<b>Payment Due Date:</b>	<b>In the Amount of and Payable to:</b>	
12/15/2017	\$30,000	Greenaction for Health and Environmental Justice
12/15/2017	\$30,000	Air Pollution Control Fund

The signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement shall be mailed to:

Kim Nguyen  
Air Pollution Specialist  
California Air Resources Board  
Enforcement Division  
P.O. Box 2815  
Sacramento, California 95812

For payment made to the Greenaction for Health and Environmental Justice, the payment along with the corresponding "Settlement Agreement Payment Transmittal Form" (Attachment A) shall be submitted to:

Greenaction for Health and Environmental Justice  
For: Community Diesel Education and Emissions Reduction Project SEP  
ATTN: Bradley Angel  
559 Ellis Street  
San Francisco, California 94109

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For payment made to the Air Pollution Control Fund, the payment by the applicable payment due date along with the corresponding "Settlement Agreement Payment Transmittal Form" (Attachment A) shall be submitted to:

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

13. Windsor Quality Foods has agreed to undertake a SEP as described in Attachment B – "Supplemental Environmental Project Agreement – Community Diesel Education and Emissions Reduction Project (DEEP) SEP", to offset a portion of the penalty, consistent with ARB's SEP Policy. Pursuant to this Agreement, Windsor Quality Foods shall make the payment by December 15, 2017.
14. Windsor Quality Foods has agreed that by funding the Community DEEP 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 an enforcement action.
15. Upon agreeing to the terms set forth in the SEP Agreement, and funding the Community DEEP SEP, Windsor Quality Foods is released of all liabilities as they relate to the Community DEEP SEP as reflected in this underlying Settlement Agreement.
16. In the event the SEP is not fully implemented in accordance with the terms of the SEP Agreement, ARB (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), to be deposited into Air Pollution Control Fund. Accordingly, Windsor Quality Foods shall assign any and all rights against the SEP implementer to ARB.
17. Effect of Untimely Payment. If the Attorney General files a civil action to enforce this settlement agreement, Windsor Quality Foods shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
18. Windsor Quality Foods shall not violate the RMP Regulation.
19. This Agreement shall be effective on the date upon which Windsor Quality Foods executes this Agreement.

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20. It is further agreed that the payments described in this Agreement are punitive in nature, rather than compensatory, therefore they are non-dischargeable under United States Code, title 11, section 523(a)(7).
21. This Agreement shall apply to and be binding upon Windsor Quality Foods, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
22. This Agreement constitutes the entire agreement and understanding between ARB and Windsor Quality Foods concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Windsor Quality Foods concerning the subject matter hereof.
23. 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. This Agreement shall further serve to toll any statute of limitation until six months after all terms and conditions of this Agreement have been fulfilled.
24. Failure to comply with any of the terms of this Agreement shall void the agreement and ARB may take enforcement action based on the initial violation and any subsequent violations of this Agreement.
25. 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.
26. 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.

**THE PENALTY'S BASIS**

27. Health & Safety Code section 39619.7 requires ARB to explain the basis for the penalties it seeks. That information is provided throughout this Agreement and is summarized here.

**The manner in which the penalty was determined.**

Penalties must be set at levels sufficient to deter violations. The penalties in this matter were determined based on all relevant circumstances, including the unique circumstances of this case, giving consideration to the eight factors specified in Health & Safety Code section 42403. Those circumstances were

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considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, penalties sought in other cases, and the potential costs and risk associated with litigating these particular violations. Specifically, this penalty reflects a penalty of approximately \$239 per day for 251 days of violation for violations occurring between October 16, 2016 and June 21, 2017. Penalties in future cases might be smaller or larger. In this matter ARB concluded there were a number of mitigating factors including:

- (a) The fact that this was a first time violation, and
- (b) Windsor Quality Foods cooperated fully with the investigation.

**The legal provisions under which the penalty was assessed.**

The penalty is based on Health & Safety Code section 42402 and 17 CCR § 95395, the provisions intended to govern RMP Regulation violations.

**Whether the governing provisions prohibit emissions at a specified level, and, if so, a quantification of excess emissions if it is practicable to do so.**

The RMP Regulation does not prohibit emissions of high GWP refrigerants above a specified level, but Health & Safety Code section 38580(b)(2) specifies that violations of any regulation under the Global Warming Solutions Act of 2006 shall be deemed to result in an emission for purposes of the governing penalty statutes.

- 28. Windsor Quality Foods acknowledges that ARB has complied with Health & Safety Code section 39619.7 in investigating, prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health & Safety Code section 42403, 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.
- 29. The penalty was based on confidential settlement communications between ARB and Windsor Quality Foods. The penalty is the product of an arm's length negotiation between ARB and Windsor Quality Foods and reflects ARB's assessment of the relative strength of its case against Windsor Quality Foods, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Windsor Quality Foods may have secured from its actions.

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30. In consideration of Windsor Quality Foods' payments to the California Air Resources Board and the SEP as described above, ARB hereby releases Windsor Quality Foods and its principals, officers, agents, predecessors and successors from any and all claims for the past violations of the RMP Regulation that ARB may have based on the circumstances described in the Recitals.
31. The undersigned represent that they have the authority to enter into this Agreement.

**SIGNATURES**

**California Air Resources Board**

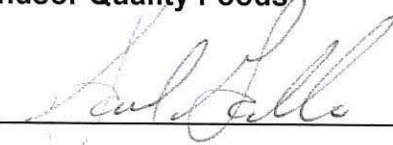
By: 

Name: Ellen M. Peter

Title: Chief Counsel

Date: 11/22/2017

**Windsor Quality Foods**

By: 

Name: Saul Gallo

Title: Plant Manager

Date: 11/13/2017