

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and Heartland Meat Company, Inc. (hereinafter "HMCI"), 3461 Main St. Chula Vista, CA 91911-5828:

I. RECITALS

- (1) Health and Safety Code, Section 39650-39675 mandates the reduction of the emissions of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the Air Resources Board identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. Transport Refrigeration Units (TRUs) are powered by diesel fueled engines that emit toxic particulate matter. TRUs are controlled under section 2477.
- (2) CCR, Title 13, section 2477 (e) (1) (A) (1) states: No owner/operator shall operate a TRU or TRU generator (gen) set in California unless it meets the in-use emission category performance standard.
- (3) CCR, Title 13, Section 2477(b) (1) (B) states that the TRU rule applies to owners and operators of diesel fueled TRUs and TRU gen sets including operators and owners of non-California-based TRUs and gensets.
- (4) The ARB Enforcement Division has documented that HMCI, failed to bring their entire fleet of TRUs in compliance with the in-use performance standard.
- (5) Health and Safety Code, Sections 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 not to exceed ten thousand dollars (\$10,000.00) respectively, for each day in which the violation occurs.
- (6) ARB contends that if the facts described in recital paragraphs (1) – (4) were proven civil penalties could be imposed against HMCI, as provided in H&SC sections 39674.
- (7) HMCI is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to

SETTLEMENT AGREEMENT AND RELEASE

ARB and HMCI

Page 2 of 5

resolve this matter completely by means of this Agreement, without the need for formal litigation, and therefore agree as follows.

II. TERMS & RELEASE

In consideration of the ARB not filing a legal action against HMCI for the violations referred to above, the ARB and HMCI agree as follows:

(1) Upon execution of this Agreement, HMCI shall pay a civil penalty of two thousand two hundred fifty dollars (\$2,250.00). Payment shall be made in check form as described below and the full amount shall be submitted at the time of the signing of this agreement.

- \$1687.50 to the **California Air Pollution Control Fund**
- \$562.50 to the **Peralta Community College District**
- All payments and documents shall be sent to the attention of:

Eusene Claire Kim Yi, Air Resources Engineer
9480 Telstar Ave. Suite 4
El Monte, CA 91731

- (2) If the Attorney General files a civil action to enforce this settlement agreement, HMCI shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (3) HMCI shall complete Low NOx Software Upgrades (reflash) on all applicable heavy duty diesel engines operating in California and report back to the ARB, within 45 days of this Agreement.
- (4) Each 1974 or newer diesel powered heavy-duty commercial vehicle in the HMCI fleet shall comply with the emission control label (ECL) requirements set forth in the CCR, Title 13, Section 2183 (c).
- (5) HMCI shall instruct all employees who operate diesel fueled commercial vehicles to comply with the idling regulations set forth in CCR, Title 13, Section 2485, within 45 days of the execution of this agreement.
- (6) HMCI shall comply with the TRU in-use performance standards set forth in Title 13, CCR, Section 2477 (e) (1) (A). Within 180 days of the execution of this Agreement, HMCI shall submit the proof of the compliance with the TRU ATCM to Ms. Eusene Claire Kim Yi, ARB Enforcement Division, 9480 Telstar Ave Suite 4, El Monte, CA 91731.

SETTLEMENT AGREEMENT AND RELEASE

ARB and HMCI

Page 3 of 5

- (7) HMCI shall not violate the TRU ATCM, as codified in CCR, Title 13, section 2477.
- (8) This Agreement constitutes the entire agreement and understanding between ARB and HMCI concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and HMCI concerning the subject matter hereof.
- (9) 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.
- (10) 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.
- (11) 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.
- (12) 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.
- (13) **SB 1402 Statement.**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39169.7). 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. We consider all relevant circumstances in determining penalties, including the eight factors specified in Health and Safety Code sections 42403 and 43024.

The per unit penalty in this case is a maximum of \$1,000 per unit per day of strict liability violation. We are seeking a total penalty from you of \$2,250, for 3 non-compliant units for a per unit penalty of-\$750.

SETTLEMENT AGREEMENT AND RELEASE

ARB and HMCI

Page 4 of 5

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

The penalty provision being applied in this case is Health and Safety Code 39674 because HMCI failed to comply with the Air Toxic Control Measure for Transport Refrigeration Units, Title 13, California Code of Regulations section 2477, which was adopted under authority of Health and Safety Code section 39600, et seq.

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

- (14) HMCI acknowledges that ARB has complied with SB 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC 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 being assessed under a provision of law that prohibits the emission of pollutants at a specified level. However, since the hours of operation of the non-compliant units involved and their individual emission rates are not known, it is not practical for ARB to quantify the excess emissions.
- (15) 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 negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days considered together with the complete circumstances of this case. The penalty was discounted in this matter based on the fact that this was a first time violation and the violator made unusually diligent efforts to comply and to cooperate with the investigation. Penalties in future cases might be smaller or larger on a per unit basis.
- (16) The penalty in this case was based in part on confidential business information provided by HMCI that is not retained by ARB in the ordinary

SETTLEMENT AGREEMENT AND RELEASE

ARB and HMCI

Page 5 of 5

course of business. The penalty in this case was also based on confidential settlement communications between ARB and HMCI that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against HMCI, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that HMCI may have secured from its actions.

- (17) Now therefore, in consideration of the payment by HMCI, in the amount of two thousand two hundred fifty dollars (\$2,250.00), ARB hereby releases HMCI and its principals, officers, agents, predecessors and successors from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs (1) – (4) above. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: 

Name: James Ryden

Title: Division Chief

Date: 1/10/11

Heartland Meat Co., Inc.

By: 

Name: Brandon Marvin

Title: General Manager

Date: 12/28/10