

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 NATURE'S PRODUCE (hereinafter "Nature's Produce"), 2622 S Alameda Street, Vernon, California 90058.

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 Title, 13 California Code of Regulations (CCR), section 2477.
- (2) CCR, Title 13, section 2477 (e) (1) (A) 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) The ARB Enforcement Division has documented that Nature's Produce, failed to bring their fleet of TRUs in compliance with the applicable in-use performance standards.
- (4) Health and Safety Code (H&SC), 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.
- (5) Nature's Produce 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 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 ARB not filing a legal action against Nature's Produce, for the violations alleged above, ARB and Nature's Produce agree as follows:

- (1) Upon execution of this Agreement, Nature's Produce shall pay a civil penalty of \$8,250.00. Payment shall be made in check form as described below and the payments shall be submitted within 15 days of signing this agreement.

SETTLEMENT AGREEMENT AND RELEASE ARB AND NATURE'S PRODUCE:

- \$6,187.50 made out to **California Air Pollution Control Fund**
- \$2,062.50 made out to **Peralta Community College District**

All payments and documents shall be sent to the attention of:

Eric Bissinger, Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

- (2) Nature's Produce shall not violate H&SC sections 43701 *et seq.* and 44011.6 *et seq.* and Title 13, CCR Sections 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (3) Nature's Produce shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to the ARB within 45 days of this agreement.
- (4) Each 1974 or newer diesel powered heavy-duty vehicle in the Nature's Produce fleet shall continue to comply with the emission control label (ECL) requirements set forth in the CCR, Title 13, Section 2183 (c).
- (5) Nature's Produce shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in CCR, Title 13, Section 2485, within 45 days of this Agreement.
- (6) Nature's Produce shall comply with the TRU in-use performance standards set forth in Title 13, CCR, Section 2477 (e) (1) (A). Within 90 days of the execution of this Agreement, Nature's Produce shall submit the proof of the compliance with the TRU ATCM to Mr. Eric Bissinger, Air Pollution Specialist, ARB Enforcement Division, Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812.
- (7) Nature's Produce shall not violate the TRU ATCM, as codified in CCR, Title 13, Section 2477.
- (8) This Agreement shall apply to and be binding upon Nature's Produce, 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.
- (9) This Agreement constitutes the entire agreement and understanding between ARB and Nature's Produce, concerning the subject matter hereof, and

supersedes and replaces all prior negotiations and agreements between ARB and Nature's Produce, concerning the subject matter hereof.

- (10) 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.
- (11) 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.
- (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) 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.
- (14) **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 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 Health and Safety Code sections 42403 and 43024.

TRU Violations

The per unit penalty for the TRU violations involved in this case is a maximum of \$1,000 per unit per day for strict liability violations or \$10,000 per unit per day for negligent or international violations pursuant to H&SC section 39674. The penalty obtained for the 11 TRU violations involved in this case is \$750 for each TRU failing to meet the applicable in-use performance standard. The penalty was discounted based on the fact that this was a first time violation and the violator made unusually diligent efforts 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.

TRU Violations

The penalty provisions being applied for the TRU ATCM (Title 13, CCR, section 2477) violations in this case is H&SC section 39674 because the TRU ATCM is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in H&SC section 39002, et seq., 39650-39675 and because Nature's Produce failed to bring TRUs in its fleet into compliance by the deadlines set forth in the TRU ATCM.

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.

TRU Violations

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 TRUs involved and their individual emission rates are not known, it is not practicable to do so.

- (15) Nature's Produce acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at H&SC section 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.
- (16) 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, and the potential costs and risk associated with litigating these particular violations. The penalty was discounted based on the fact that this was a first time violation and the violator made unusually diligent efforts to cooperate with the investigation. Penalties in future cases might be smaller or larger on a per unit/vehicle basis.
- (17) The penalty was based on confidential settlement communications between ARB and Nature's Produce that ARB does not retain in the ordinary course of business either. The penalty is the product of an arm's length negotiation between ARB and Nature's Produce and reflects ARB's assessment of the relative strength of its case against Nature's Produce, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Nature's Produce may have secured from its actions.

(18) Now, therefore, in consideration of the payment by Nature's Produce, in the amount of eight thousand two hundred fifty dollars (\$8,250.00), ARB hereby releases Nature's Produce and its principals, officers, directors, agents, subsidiaries, predecessors, and successors from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs (1) through (4) above. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: _____



Name: James Ryden

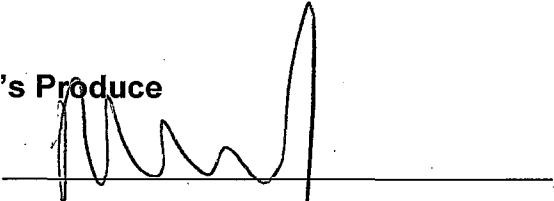
Title: Chief Enforcement Division

Date: _____

11/8/11

Nature's Produce

By: _____



Name: Rick Polinsky

Title: Pres & CEO

Date: _____

10-24-11