

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Del Monte Fresh Produce N.A., Inc. (Del Monte), with its principal location at 241 Sevilla Avenue, Coral Gables, Florida 33134 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates the reduction of the emission of toxic air contaminants (TAC). CARB has determined that particulate matter (PM) from diesel-fueled engines is a TAC. (Health & Saf. Code §§ 39650-39675.)
- (2) Regulation. CARB adopted the *Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated On Ocean-Going Vessels At-Berth in a California Port* (At-Berth Regulation) to reduce diesel PM and criteria pollutant emissions from ocean going vessels. (Cal. Code Regs., tit. 17, § 93118.3.)
- (3) Regulatory Provisions. Any person who owns, operates, charters, rents, or leases any United States (U.S.) or foreign flagged container vessel, passenger vessel, or refrigerated cargo vessel that visits a California port is required to meet the operational time limit during 80 percent of each fleet's visits, reduce the baseline fleet power generation (BFPG) by 80 percent for each fleet, as well as submit statements of compliance by March 1 following each compliance year, and maintain records. (Cal. Code Regs., tit. 17, §§ 93118.3(d), and (g).)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to twelve thousand one hundred eighty dollars (\$12,180.00 USD) for strict liability violations for each day in which the violation occurs. (Cal. Code Regs., tit. 17, § 93118.3; Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., and 42410.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Del Monte was organized under the laws of the state of Florida as a corporation and conducted business in the State of California.
- (6) Allegations. CARB alleges that Del Monte violated the At-Berth Regulation by failing to achieve the baseline power reduction requirements and failing to achieve the operational time limit requirements, as outlined in Notice of Violation SP030322_DELMONTE. CARB alleges that if paragraphs 1 through 4 were proven, civil penalties could be imposed against Del Monte for each and every megawatt hour involved in the violations and for each day.

- (7) Acknowledgment. Del Monte admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) Consideration. In consideration of the foregoing, and of the promises and facts 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 Settlement Agreement. In order to resolve the violations described herein, Del Monte has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against Del Monte for the alleged violations referred to above in the Legal Background and Case Background, and Del Monte's agreement to complete all terms and conditions set forth below, CARB and Del Monte agree as follows:

- (9) Settlement Amount. Del Monte shall pay a total settlement in this case of eight hundred fifty thousand dollars (\$850,000.00 USD). Of this amount, Del Monte shall pay a civil penalty of two hundred seventy-nine thousand dollars (\$279,000.00 USD). Del Monte also agrees to fund two Supplemental Environmental Projects (SEPs) which, combined, total one hundred thirty-nine thousand dollars (\$139,000.00 USD), or 50 percent of the civil penalty amount. Del Monte will fully fund the SEP entitled, *Woodworking Bus* (SEP ID SEP20-027) with Side Street Projects in the amount of five thousand one hundred and sixty-five dollars (\$5,165.00 USD); and will partially fund the SEP entitled, *Air Purifier Distribution Program* (SEP ID SEP24-072) with San Diego County Air Pollution Control District in the amount of one hundred thirty-four thousand three hundred thirty-five dollars (\$134,335.00 USD), consistent with CARB's SEP Policy. Del Monte shall also pay for a Mitigation Project in the amount of five hundred seventy-one thousand dollars (\$571,000.00 USD). Del Monte shall make all payments within thirty (30) calendar days from the Notification Date and provide notice consistent with Paragraph 17 (Notices).
- (10) Mitigation. As stated in Paragraph 9, Del Monte shall pay, according to the requirements of Paragraph 12, five hundred seventy-one thousand dollars (\$571,000.00 USD) to fund a Mitigation Project for the purpose of mitigating excess oxides of nitrogen (NOx) and PM emissions from the alleged violations in the geographic areas impacted.
- (11) Notification Date. The date upon which CARB notifies Del Monte according to Paragraph 17 (Notices), that the Settlement Agreement is fully executed, or when

CARB sends the fully executed Settlement Agreement to Del Monte, whichever occurs first.

- (12) Civil Penalty and Mitigation Payment Method. Del Monte shall pay the civil penalty and mitigation amounts by check, credit card, wire transfer, or portal, payable to the "California Air Resources Board," using instructions provided separately by CARB in Payment Transmittal Forms. Del Monte is responsible for all payment processing fees. Payments shall be accompanied by the appropriate Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty money into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. CARB shall deposit the mitigation money into the Air Pollution Control Fund for the purpose of reducing air pollution in California through CARB mitigation programs. Should payment instructions change, CARB will provide notice to Del Monte in accordance with Paragraph 17 (Notices).
- (13) SEP Payment Method(s). Del Monte shall fund the two SEPs by separate payments to the SEP Recipient/Administrators for each SEP using instructions provided by CARB in each SEP Payment Transmittal Form. Del Monte shall fund the SEP entitled, *Woodworking Bus* (SEP ID SEP20-027) with Side Street Projects by wire transfer. Del Monte shall also fund the SEP entitled, *Air Purifier Distribution Program* (SEP ID SEP24-072) with San Diego Air Pollution Control District by wire transfer, credit card, or check. Del Monte is responsible for all payment processing fees. Payments shall be accompanied by the SEP Payment Transmittal Forms to ensure proper application. Should payment instructions change, CARB will provide notice to Del Monte in accordance with Paragraph 17 (Notices).
- (14) Prohibition Against Financial Benefit. Del Monte has agreed that by funding and contributing to the SEPs entitled, *Woodworking Bus* (SEP ID SEP20-027) and *Air Purifier Distribution Program* (SEP ID SEP24-072), Del Monte will not receive any direct or indirect financial benefit, and that whenever Del Monte publicizes or refers to the SEPs or the results of the SEPs, Del Monte will state that the SEPs are being undertaken as part of the settlement of a CARB enforcement action wherein no liability was admitted.
- (15) Assignment of Rights. In the event that either SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP Recipient/Administrator, less any amount expended 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, Del Monte assigns any and all rights against the SEP Recipient/Administrators to CARB.

- (16) Documents. Del Monte shall promptly email or mail the signed and dated Settlement Agreement and Mitigation Project to the address or email in Paragraph 17 (Notices).
- (17) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board
Enforcement Division / Settlement Agreements
Freight Hub Enforcement Branch / Port and Rail Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to Del Monte:

Del Monte Fresh Product N.A., Inc.
241 Sevilla Avenue
Coral Gables, Florida 33134

As to Del Monte Legal Representation:

Joseph A. Walsh II, Esq.
Collier Walsh Nakazawa LLP
One World Trade Center, Suite 2370
Long Beach, California 90831
joe.walsh@cwn-law.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (18) Repeat Violations. Del Monte agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (19) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 9 pages and 37 numbered paragraphs.
- (20) Binding Effect. This Settlement Agreement binds Del Monte, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent

corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.

- (21) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (22) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (23) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid, or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (24) Choice of Law. This Settlement 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.
- (25) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 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 the benefit of a governmental unit.
- (26) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (27) Non-Waiver. The failure to enforce any provision of this Settlement 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 Settlement 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 Settlement Agreement or otherwise provided by law.
- (28) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud,

duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.

- (29) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (30) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile, or photocopied signatures shall be considered as valid signatures.
- (31) Release. In consideration of full payment of the separate civil penalty and mitigation payments, and all other undertakings above, CARB hereby releases Del Monte and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in Paragraph 6 (Allegations) above.
- (32) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (33) Per Unit Penalty. The maximum allowed per unit penalty in this case is twelve thousand one hundred eighty dollars (\$12,180.00 USD) per day per alleged violation under Health and Safety Code section 39674, for alleged violations of the At-Berth Regulation (Cal. Code Regs., tit. 17, § 93118.3). The per unit penalty in this case is one thousand dollars (\$1,000.00 USD) per alleged violation. The total civil penalty of two hundred seventy-nine thousand dollars (\$279,000.00 USD) over an unspecified number of days of violation is for 279 alleged violations.
- (34) Emissions. The provisions cited in Paragraphs 1 through 6 above do not prohibit emissions above a specified level. Since CARB has alleged that the fleet did not meet the regulatory requirements, all of the alleged emissions were excess and illegal.
- (35) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the alleged violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial

burden to the alleged violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.

(36) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Del Monte or confidential settlement communications.

(37) Effect of Settlement/Reservation of Rights. The following shall apply:

- (a) This Settlement Agreement resolves all civil claims of CARB for the violations alleged in this Settlement Agreement.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Del Monte with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Del Monte with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Del Monte to CARB.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the alleged violations addressed in this Settlement Agreement or otherwise.
 - (v) Any criminal liability.
 - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Del Monte shall not assert, and may not maintain, any defense or claim based upon the principles of waiver,

res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.

- (d) This Settlement Agreement does not limit or affect the rights of Del Monte or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Del Monte, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Del Monte is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Del Monte compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Del Monte compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Ellen M. Peter

Title: Chief Counsel

Date: February 19, 2025

(Continued on page 9, signature block for Del Monte Fresh Produce N.A., Inc.)

Del Monte Fresh Produce N.A., Inc.

Signature: /S/

Name: Mohammed Abbas

Title: Director

Date: February 12, 2025