

This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (CARB) and DEL MONTE FOODS, INC., 205 North Wiget Lane, Walnut Creek, California 94598.

RECITALS

1. The Global Warming Solutions Act of 2006 authorized CARB to adopt regulations requiring the reporting and verification of greenhouse gas emissions. (Health & Saf. Code § 38530.) Pursuant to that authority, CARB adopted the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR), California Code of Regulations (CCR), title 17, § 95100 et seq.
2. The MRR is crucial to the development of the greenhouse gas (GHG) inventory, and supports other regulatory programs, including the Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms, CCR, title 17, § 95801 et seq., known as the Cap-and-Trade Regulation. The MRR requires most reporting entities to submit, by April 10 of each year, an emissions data report containing emissions and product data that is certified to be complete and accurate within stated standards. (CCR, tit. 17, § 95103.) The April 10 deadline is intended to precede other regulatory events later in the year, such as verification under the MRR, and the distribution of allowances and surrender of compliance instruments under the Cap-and-Trade Regulation.
3. Where a report required under the MRR is late or does not meet the regulation's standards for accuracy, completeness, or third-party verification, the MRR provides that each day a report remains unsubmitted, incomplete or inaccurate constitutes a separate violation. (CCR, tit. 17, § 95107.)
4. California Health & Safety Code sections 38580 and 42402 provide that one who violates the MRR or related regulations is strictly liable for a penalty of up to \$10,000 for each violation.
5. Under the MRR section 95115(n)(10), the operator of a tomato processing facility is obligated to report the applicable quantity of tomato products produced in the data year. Under Cap-and-Trade Regulation section 95891, CARB allocates allowances—each of which represents a limited tradeable authorization to emit up to one metric ton of carbon dioxide equivalent—to entities in certain industries, including tomato processors, based on a product output-based allocation calculation methodology that depends on the production reporting required under the MRR.
6. CARB contends that, for the 2013 and 2014 data years, Del Monte Foods failed to comply with the MRR by incorrectly quantifying the covered tomato product data for its tomato processing facility. Del Monte Foods also mischaracterized a quantity of product that did not meet an applicable covered product data definition in MRR. These errors in Del Monte Foods' emissions data report resulted in an over-reporting of covered product data and caused CARB to provide Del Monte Foods with more allowances than it would have otherwise been entitled under the MRR and California's Cap-and-Trade Regulation.
7. In reaching this settlement, CARB considered a variety of circumstances, including whether the company self-reported the violation, the size and complexity of the violator's

operations, the nature, magnitude, and duration of the violation, any harm to the environment or the regulatory program, efforts the violator took to prevent the violation and to correct it, and the financial burden to the violator.

8. In this matter, CARB has taken into account a number of mitigating factors. This is the first time CARB has noted the company as being in violation. The company's explanation indicates an innocent error. The company has described changes it has made to its quantification methods and documentation for covered product data to avoid such errors in the future.

9. To resolve these alleged violations, Del Monte Foods has taken, or agreed to take, the actions enumerated below. CARB accepts this Agreement in termination and settlement of this matter.

10. 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 violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, CARB and Del Monte Foods agree as follows.

TERMS

11. Within 15 business days following execution by all parties of this Agreement, Del Monte Foods shall deliver a cashier's check or money order in the sum of \$25,000.00 made payable to the "Air Pollution Control Fund."

The check should note "Del Monte Foods, Inc. 2017 MRR Settlement" in the memo section. Del Monte Foods shall send (1) the signed settlement agreement, (2) check, and (3) the payment transmittal form (Attachment A) to:

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

and send a copy of the settlement agreement and copy of the check to:

William Brieger
Air Resources Board
P.O. Box 2815
Sacramento, CA 95812-2815

12. It is further agreed that the penalties described in the prior paragraph are payable to a governmental unit and punitive in nature, rather than compensatory. Therefore these penalties, arising from the facts described in recital paragraphs 1 – 10, are non-dischargeable under 11 United States Code § 523(a)(7).

13. In addition to the monetary penalty agreed upon, Del Monte Foods has agreed to return the allowances that were erroneously allocated to them because of misreported covered product data for the 2013 and 2014 data years to ARB under the Cap-and-Trade Regulation.

14. Del Monte Foods shall not violate the MRR.

15. This Agreement shall apply to and be binding upon Del Monte Foods, and any receivers, trustees, 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.

16. This Agreement constitutes the entire agreement and understanding between CARB and Del Monte Foods concerning the subject matter hereof, and supersedes all prior negotiations and agreements between CARB and Del Monte Foods concerning the subject matter hereof.

17. 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.

18. 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.

19. 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.

20. 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.

The Penalty's Basis

21. Health & Safety Code section 39619.7 requires CARB to explain the manner in which the penalty was determined, the law on which it is based, and whether that law prohibits emissions at a specified level. CARB has considered all relevant factors, 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, which provision does not prohibit the emission of pollutants at a specified level. That information, some of which is also elsewhere in this settlement agreement, is summarized here.

The manner in which the penalty was determined, including any per-unit penalty.

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, and the eight factors specified in Health & Safety Code section 42403. CARB considered the reporting entity's size and complexity, the extent to which the monitoring and reporting deviated from MRR requirements, the cause of any errors and omissions, and the magnitude of any errors. Those circumstances were 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. Penalties in future cases might be smaller or larger.

In this matter the penalty equates to \$25,000, which negates any temporary financial benefit experienced by Del Monte Foods for the allowances received in error. In future cases, CARB may apply a multiplier to similar penalties, depending on circumstances. The penalty was discounted based on the fact that the violation was a first time violation, circumstances suggest that the reporting error may have resulted from a misunderstanding, and the company made diligent efforts to comply and to cooperate with CARB's investigation. In addition, Del Monte Foods will return to ARB the allowances allocated in error.

The legal provisions under which the penalty was assessed and why those provisions are appropriate. The penalty is based on Health & Safety Code section 42402 and CCR, title 17, section 95107, the provisions intended to govern MRR violations.

Whether the governing provisions prohibit emissions at a specified level. The MRR does not prohibit emissions above a stated 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.


22. The penalty was based on confidential settlement communications between CARB and Del Monte Foods. The penalty is the product of an arms-length negotiation between CARB and the company and reflects CARB's assessment of the relative strength of its case against the company, the desire to avoid the uncertainty, burden and expense of litigation, to obtain swift compliance with the law and to remove any unfair advantage that the company may have secured from its actions.

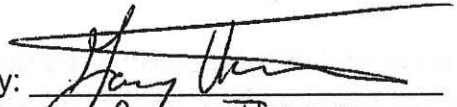
23. In consideration of the penalty payment and undertaking described under the terms section, above, CARB hereby releases Del Monte Foods and its receivers, trustees, successors and assignees, subsidiary and parent corporations from any claims the CARB may have based on the circumstances described in paragraph 6, above.

24. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Del Monte Foods, Inc.

By: 
Ellen M. Peter
Chief Counsel

By: 
Name: Gary Thomas
Title: SUP SC operations

Date: 12/20/2017

Date: 12-14-17