

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into between the State of California Air Resources Board (ARB) with its principal office at 1001 "I" Street, Sacramento, California 95814, and Save Mart Supermarkets (Save Mart) 1800 Standiford Avenue, Modesto, California 95350.

### RECITALS

1. The Global Warming Solutions Act of 2006 authorizes ARB to adopt regulations to reduce greenhouse gas emissions (Health & Safety Code section 38530).
2. Pursuant to that authority, ARB adopted the Regulation for the Management of High Global Warming Potential (GWP) Refrigerants for Stationary Sources, California Code of Regulations (CCR), title 17, section 95380 et seq. (RMP Regulation), which became effective on November 19, 2010.
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 operate an automatic leak detection system if the refrigeration system(s) operates year-round, and 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)).
4. Save Mart owns and operates stationary refrigeration systems subject to the RMP Regulation.
5. Save Mart owned and operated stationary refrigeration systems without automatic leak detection systems in violation of the RMP Regulation.
6. Save Mart stipulates to the facts described in recital paragraphs 4 and 5.
7. The RMP Regulation provides that each day or portion thereof that any leak inspection required by the RMP Regulation is not completed constitutes a separate violation subject to daily penalties (17 CCR § 95395(b)).
8. 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 ten thousand (\$10,000) per day, for each day that the violation occurs.
9. ARB and Save Mart have agreed to resolve these alleged violations completely under the terms of this Agreement. In order to resolve these violations, Save Mart agrees to take the actions enumerated below under "TERMS AND CONDITIONS".

### TERMS AND CONDITIONS

10. Within forty five days following execution and delivery of this Agreement by the Parties, Save Mart agrees to a total payment in the amount of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00). Payment shall be made in accordance with the instructions in Attachment A to this Agreement
11. This Agreement shall apply to and be binding upon Save Mart, 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.
12. This Agreement constitutes the entire agreement and understanding between ARB and Save Mart concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Save Mart concerning the subject matter hereof.
13. 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 both parties to this Agreement. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
14. 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, in which case Save Mart would be credited for any payment made pursuant to this Agreement.
15. 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.
16. 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.
17. This Agreement is deemed to have been drafted equally by ARB and Save Mart; it will not be interpreted for or against either Party on the ground that said Party drafted it.

18. **SB 1402 Statement.** Health & Safety Code section 39619.7 (Senate Bill 1402, Dutton, chapter 413, statutes of 2010) requires ARB to explain the basis for the penalties it seeks. This 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 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. In this matter ARB concluded there were a number of mitigating factors including:

- (a) The fact that this was a first time violation;
- (b) Save Mart cooperated fully with the investigation; and
- (c) Save Mart acted quickly to return to compliance.

This penalty reflects approximately \$411 per day for each day Save Mart operated a large refrigeration system in violation of the RMP Regulation.

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

The penalty is based on Health and Safety Code section 42402 and CCR, title 17, section 95395, the provisions that 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.

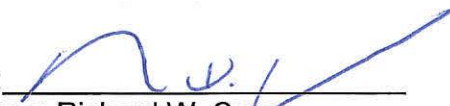
19. Save Mart acknowledges that ARB has complied with Senate Bill 1402 in investigating, prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health & Safety Code section 42403, has explained the manner in which the penalty amount was calculated, 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.

20. The penalty was based on confidential settlement communications between ARB and Save Mart. The penalty is the product of an arm's-length negotiation between ARB and Save Mart and reflects ARB's assessment of the relative strength and weakness of its case against Save Mart, the desire to avoid the uncertainty, burden and expense of litigation, and to obtain swift compliance with the RMP Regulation.
21. Now therefore, in consideration of the payment on behalf of Save Mart to the California Air Resources Board, ARB hereby resolves with Save Mart and its principals, officers, directors, employees, agents, predecessors and successors any and all claims for the alleged violations of the RMP Regulation that ARB may have based on the circumstances described in the Recitals.
22. The undersigned represent that they have the authority to enter into this Agreement.


#### SIGNATURES

##### California Air Resources Board

By:   
Name: Richard W. Corey  
Title: Executive Officer

Date: 6/18/2015

##### Save Mart Supermarkets, a California Corporation

By:   
Name: Cary Mergele  
Title: Vice President/General Counsel

Date: 5/11/15