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 Harvest Meat Company, Incorporated (hereinafter "HMC "), 1022 Bay Marina Drive Suite 106, National City, California 91950.

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 within chapter 9, division 3, Title 13 of the California Code of Regulations (CCR).

(2) CCR, Title13, section 2477 (e) (1) (E) (1) (d) states: Failure to apply or submittal of false information is a violation of state law subject to civil penalty.

(3) The ARB has documented that HMC submitted false data in the Air Resources Board Equipment Registration (ARBER) system.

(4) 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.

(5) ARB contends that if the facts described in recital paragraphs (1) – (4) were proven civil penalties could be imposed against HMC, as provided in H&SC sections 39674.

(6) HMC 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 the ARB not filing a legal action against HMC for the violations referred to above, the ARB and HMC agree as follows:

(1) Upon execution of this Agreement, a civil penalty of one thousand, one hundred and twenty five dollars ($1,125.00) shall be paid on behalf of HMC as follows:

- $843.75 to the **California Air Pollution Control Fund**
- $281.25 to the **Peralta Community College District**
- Checks with the signed settlement agreement shall be sent to:

  Mr. Aldo Chaney, Air Pollution Specialist
  Air Resources Board, Enforcement Division
  9480 Telstar Ave., Suite 4
  El Monte, CA 91731

(2) If the Attorney General files a civil action to enforce this settlement agreement, HMC shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees and costs.

(3) HMC shall not violate the TRU ATCM, as codified in CCR, Title 13 Section 2477.

(4) HMC shall correct all false data in the Air Resources Board Equipment Registration (ARBER) system database within 45 days of the execution of this Agreement.

(5) HMC 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) This Agreement shall apply to and be binding upon HMC, 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.

(7) This Agreement constitutes the entire agreement and understanding between ARB and HMC concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and HMC concerning the subject matter hereof.

(8) 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.

(9) 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.

(10) 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.

(11) 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.

(12) **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 section 42403 and 43024.

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 intentional violations pursuant to H&SC section 39674. The penalty obtained for the TRU violations involved in this case is $225.00 per unit for 5 units with false data for a penalty of $1,125.00 after considering all factors specified in 43024. The penalty reflects the fact that these were unintentional first time violations and that HMC cooperated with the investigation.

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 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 HMC submitted false data in the Air Resources Board Equipment Registration (ARBER) system.

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 opacity or 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 quantify the excess emissions.

(13) HMC 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 TRUs involved and their individual emission rates are not known, it is not practicable for ARB to quantify the excess emissions.

(14) 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.

(15) The penalty in this case was based in part on confidential business information provided by HMC that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and HMC 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 HMC, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that HMC may have secured from its actions.

(16) Now therefore, in consideration of the payment by HMC, in the amount of one thousand, one hundred and twenty five dollars ($1,125.00), ARB hereby releases HMC 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: Jim Ryden
Title: Chief, Enforcement Division
Date: 4/4/11

Harvest Meat Company, Incorporated

By: _____

Name: MARIO FOIGHT
Title: TRANSPORTATION MANAGER
Date: 3/23/11

332062

HARVEST MEAT COMPANY

VENDOR NO.: 64

NAME: PERALTA COMMUNITY COLLEGE DIST

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.

DATE: 03/01/11 CHECK NO.: 332062 PAGE: 1

INVOICE DATE	INVOICE NO.	INVOICE AMOUNT	DISCOUNT AMOUNT	AMOUNT PAID	COMMENTS
03/01/11	02072011	281.25	.00	281.25	
TOTALS ►		281.25	.00	281.25	

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND • PADLOCK ICON DISAPPEARS WITH HEAT • FLUORESCENT FIBERS AND OTHER SECURITY FEATURES

HARVEST MEAT COMPANY, INC.

1022 BAY MARINA DRIVE
SUITE 106
NATIONAL CITY, CA 91950
(619) 477-0185
(800) 653-2333

P.O. BOX 540389
ORLANDO, FL 32854-0389
(407) 296-0818
(800) 883-7777

332062

CHECK NUMBER	DATE
332062	03/01/11

PNC Bank, N.A.
New Jersey

55-277/312

AMOUNT
******281.25

PAY EXACTLY TWO HUNDRED EIGHTY ONE AND 25/100 DOLLARS

HARVEST MEAT COMPANY
OPERATING ACCOUNT

RUB RED IMAGE

PAY TO THE ORDER OF PERALTA COMMUNITY COLLEGE DIST

DISAPPEARS WITH HEAT

⑈332062⑈ ⑆031202770⑆ 8019337638⑈