

# 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 Dole Fresh Fruit Company (hereinafter "Dole"), 152 Conant Street Beverly, MA 01915.

## I. RECITALS

- (1) Health and Safety Code, Section 39650-39675 mandates the reduction of the emission 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 (ARB) 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. Title 13 California Code of Regulations (CCR) section 2477 regulates emissions of diesel particulate matter from TRUs.
- (2) Title 13 CCR section 2477 (e) (1) (E) (1) requires Owner/Operators of all California based TRUs or TRU generator (gen) sets subject to the regulation to apply for an ARB identification number (IDNs) for all California-based TRUs or TRU gen sets. Within 30 days of receipt of the ARB-issued identification number, the owner/operators must permanently affix or paint the assigned identification number on the TRU or TRU gen set housing so that it is clearly visible. The ARB identification number shall be preceded by the letters "ARB" and meet the other requirements of the regulation. ARB also allows the use of BIC codes in place of ARB IDNs, provided these conditions are met. For example, the I.D. number shall appear on both sides of TRU chassis housing for truck and trailer TRUs, on both sides of the TRU for rail car and shipping container TRUs and both sides of gen set housing for TRU gen sets. Letters and numbers shall be readily legible during daylight hours, from a distance of 50 feet while the unit is stationary.
- (3) The ARB, with the cooperation of Dole, has documented that Dole failed to affix or paint the BIC codes or ARB-issued identification numbers on both sides of its TRU gen sets.
- (4) Failure to affix or paint BIC codes or ARB-issued identification number on a TRU is a violation of state law subject to penalties. Health and Safety Code, Sections 39674 (a) and (b), authorize civil penalties not to exceed one thousand dollars (\$1,000) or ten thousand dollars (\$10,000) respectively for each day that the violation occurs.
- (5) In order to resolve its violations described in paragraph (3) above, Dole has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, the ARB accepts this Agreement in termination and settlement of this

matter.

- (6) 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, the ARB and Dole agree as follows:

## II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against Dole for the violations referred to above, the ARB and Dole agree as follows:

- (1) Upon execution of this Agreement, the sum of twenty four thousand seven hundred fifty dollars (\$24,750.00) shall be paid on behalf of Dole, as follows:

- \$18,562.50 to the **California Air Pollution Control Fund**.
- \$6,187.50 to the **Peralta Community College District** to fund diesel technology education programs at California Community Colleges.
- Checks with the signed settlement agreement shall be sent to:

Mr. H. Cuauhtémoc Pelayo, Air Pollution Specialist  
Air Resources Board, Enforcement Division  
9480 Telstar Ave., Suite 4  
El Monte, CA 91731

- (2) Dole shall not violate CCR, Title 13, Section 2477.
- (3) Dole shall affix or paint all the BIC codes on both sides of the TRUs and report back to the ARB within 30 days of the execution of this agreement. The report shall be sent to Mr. Pelayo at the above address.
- (4) This Agreement constitutes the entire agreement and understanding between ARB and Dole concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Dole concerning the subject matter hereof.
- (5) 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.
- (6) 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.

- (7) 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.
- (8) 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.
- (9) 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 43024.

The per unit penalty in this case is a maximum of \$1000.00 per unit per day for strict liability violations pursuant to Health and Safety Code section 39674. The penalty obtained in this case is \$225.00 per unit for 110 mislabeled units for a total penalty of \$24,750.00 after considering all factors specified in Health and Safety Code section 43024. In particular, the penalty reflects penalties obtained in other labeling violation cases and Dole's cooperation 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 in this case is Health and Safety Code section 39674 because Dole failed to comply with the Air Toxic Control Measure adopted under Health and Safety Code section 39600 et seq.

**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 level of g/hp-hr. This violation does not cause excess emissions, however it does violate the labeling requirement of the regulation.

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- (10) Dole 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 HSC sections 42403 and 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 this particular violation involves the labeling requirement which does not involve excess emissions.
- (11) 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. Penalties in future cases might be smaller or larger on a per unit basis.
- (12) The penalty in this case was based on confidential settlement communications between ARB and Dole that ARB does not retain in the ordinary course of business. The penalty also reflects ARB's assessment of the relative strength of its case against Dole, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Dole may have secured from its actions.
- (13) Now therefore, in consideration of the payment on behalf of Dole to the California Air Pollution Control Fund, the ARB hereby releases Dole and its principals, officers, agents, predecessors and successors from any and all claims for past violations of Health and Safety Code Sections 39650-39675 and CCR, title 13, section 2477, the ARB may have based on the circumstances described in paragraph (3) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

**California Air Resources Board**

By: Ellen M. Peter

Name: Ellen M. Peter

Title: Chief Counsel

Date: 12/9/2011

**Dole Fresh Fruit Company**

By: Robert A. McKenny

Name: Robert A. McKenny

Title: Director of Equipment

Date: 11-15-2011