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 Performance Foodservice of Southern California (Performance) 16630 Gale Avenue, City of Industry, 91745. ARB and Performance are collectively referred to as the "Parties" in this Agreement.

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 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 global warming potential (GWP) refrigerants are required to file an annual report for the previous year by March 1 each year (17 CCR § 95388(a).

4. Performance owns and operates a stationary refrigeration system with a full charge of greater than 2,000 pounds of a high GWP refrigerant.

5. Performance submitted a 2012 annual report on August 27, 2013 which ARB alleges is 180 days past the date when the annual report was due.

6. The RMP Regulation provides that each day or portion thereof that any report required by the RMP Regulation remains unsubmitted or is submitted late constitutes a separate violation subject to daily penalties (17 CCR § 95395(b)).

7. 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.

8. Performance denies all allegations against it. However, ARB and Performance have agreed to resolve these alleged violations completely under the terms of this Agreement. In order to resolve these violations, Performance agrees to take the actions enumerated below under "TERMS AND CONDITIONS".

TERMS AND CONDITIONS

9. Within ten days following execution and delivery of this Agreement by the Parties, Performance agrees to a total payment in the amount of NINETY FIVE THOUSAND DOLLARS ($95,000.00). Payment shall be made as follows:

   A payment of $47,500.00 shall be made to the "Air Pollution Control Fund" on behalf of Performance.

   Please submit payment with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

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

   A payment of $47,500.00 shall be made to the "South Coast Air Quality Management District" on behalf of Performance..

   Please submit payment with the attached "Settlement Agreement Payment Transmittal Form" (Attachment B) to:

   South Coast Air Quality Management District
   21865 E. Copley Drive
   Diamond Bar, CA, 91765
   Attn: David De Boer

   Please submit the signed Settlement Agreement and all other correspondence to:

   Ms. Cathleen Oliver
   Air Resources Board, Enforcement Division
   P.O. Box 2815
   Sacramento, CA 95812

10. Performance shall not violate the RMP Regulation.

11. This Agreement shall apply to and be binding upon Performance, 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 Performance concerning the subject matter hereof, and supersedes

and replaces all prior negotiations and agreements between ARB and Performance 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.

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 Performance; 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) Performance promptly filed the report ARB alleged it to have filed late;

(c) Performance cooperated fully with the investigation;

(d) Performance's overall compliance history;

(e) Performance denies that it ever received notice, and was not aware, of the new report filing requirement it is alleged not to have complied with timely; and

This penalty reflects more than $500 per day for 180 days for each day the 2012 annual report was allegedly submitted late.

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 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. Performance 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 Performance. The penalty is the product of an arm's length negotiation between ARB and Performance and reflects ARB's assessment of the relative strength and weakness of its case against Performance, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the RMP Regulation.

21. Now therefore, in consideration of the payment on behalf of Performance to the California Air Resources Board, ARB hereby resolves with Performance and its principals, officers, agents, predecessors and successors any and all claims for the past 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: Ellen M. Peter
Title: Chief Counsel

Date: 10/20/2014

Performance Foodservice of Southern California

By: _____
Name:
Title: President

Date: 9/30/14