

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the State of California Air Resources Board (ARB) with its principal office at 1001 "I" Street, Sacramento, California 95814, and Kerry Inc. d/b/a Kerry Ingredients and Flavours (Kerry) located at 33063 Western Avenue, Union City, California 94587. ARB and Kerry are referred to collectively herein as the "Parties".

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 or equal to 200 pounds, but less than 2,000 pounds, of a high GWP refrigerant to register all systems subject to the regulation by March 1, 2014 (17 CCR § 95383).
4. Kerry owns and operates a stationary refrigeration system with a full charge of greater than or equal to 200 pounds, but less than 2,000 pounds, of a high GWP refrigerant.
5. Kerry registered its refrigeration systems on January 29, 2015, 334 days after the required submittal date of March 1, 2014.
6. Kerry admits to the facts in recitals 4 and 5, listed above.
7. The RMP Regulation provides that each day or portion thereof that a required registration or report remains unsubmitted or is submitted late constitutes a 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 Kerry have agreed to resolve the alleged violations completely under the terms of this Agreement. In order to resolve the violations, Kerry agrees to take the actions enumerated below under "TERMS AND CONDITIONS".

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TERMS AND CONDITIONS

10. Within forty five days following execution and delivery of this Agreement by the Parties, Kerry agrees to a total payment in the amount of ONE HUNDRED THIRTY THREE THOUSAND, SIX HUNDRED DOLLARS (\$133,600.00). Payment shall be made in accordance with the instructions in Attachment A to this Agreement. Upon payment, Kerry is released and discharged from further liability relating to the delay in registration detailed in recitals 4 and 5.
11. Kerry shall not violate the RMP Regulation.
12. This Agreement shall apply to and be binding upon Kerry, 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.
13. This Agreement constitutes the entire agreement and understanding between ARB and Kerry concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Kerry concerning the subject matter hereof.
14. 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.
15. 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 the event ARB took such action, any liability for the initial violation would be reduced by the amount paid under this Agreement.
16. 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.
17. 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.
18. This Agreement is deemed to have been drafted equally by ARB and Kerry; it will not be interpreted for or against either Party on the ground that said Party drafted it.
19. **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; and
- (b) Kerry cooperated fully with the investigation.

This penalty reflects \$400 per day for 334 days for each day the registration was submitted late.

The legal provisions under which the penalty was assessed.

The penalty is based on Health and Safety Code sections 38580 and 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.

20. Kerry 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.

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21. The penalty was based on confidential settlement communications between ARB and Kerry. The penalty is the product of an arm's-length negotiation between ARB and Kerry and reflects ARB's assessment of the relative strength and weakness of its case against Kerry, the desire to avoid the uncertainty, burden and expense of litigation, and to obtain swift compliance with the RMP Regulation.
22. Now therefore, in consideration of the payment on behalf of Kerry to the California Air Resources Board, ARB hereby resolves with Kerry and its principals, officers, 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.
23. The undersigned represent that they have the authority to enter into this Agreement.

SIGNATURES

California Air Resources Board

Kerry Inc. d/b/a Kerry Ingredients and Flavours

By: _____

Name: Richard W. Corey
Title: Executive Officer

By: _____

Name: Lanny Schimmel
Title: General Counsel, North America

Date: _____

10/26/2015

Date: 09/15/15