

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Textron Specialized Vehicles Inc. (TSV), with its principal location at 1451 Marvin Griffin Road, Augusta, Georgia 30906 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates the reduction of emissions of air pollution from off-road engines. (Health & Saf. Code §§ 43013; 43018.)
- (2) Regulation. CARB adopted the "*Small Off-Road Engines*" Regulation (Cal. Code Regs., tit. 13, §§ 2400-2409) (SORE Regulation) to reduce emissions of, inter alia, oxides of nitrogen (NOx) and hydrocarbons (HC) from off-road spark-ignited small off-road engines (SORE) rated at equal to or less than 19 kilowatts, and equipment utilizing such engines. CARB adopted the "*Off-Highway Recreational Vehicles and Engines*" Regulation (Cal. Code Regs., tit. 13, §§ 2410-2419.4) (OHRV Regulation) to reduce emissions of, inter alia, NOx and HC from these off-road engines.
- (3) Regulatory Provisions. The SORE Regulation requires all SORE engines that are manufactured for sale, sold, or offered for sale in California, or introduced, delivered, or imported into California for introduction into commerce to be covered by an Executive Order showing the engine meets the exhaust emission standards as determined; was properly tested following all required test procedures; contains an emission control label; meets all defect warranty requirements; and compliance with the reporting requirements. (Cal. Code Regs., tit. 13, § 2400-2409.) Entities and individuals that sell, lease, use, or introduce into commerce in California a new off-highway recreational vehicles (OHRV) must comply with applicable emissions standards and regulatory requirements. Manufacturers of new OHRV that are sold, leased, used, or introduced into commerce in California are required to comply with the exhaust and evaporative emissions requirements, comply with the test procedures for determining certification and compliance with the standards, certify and obtain an Executive Order (EO) for the engines, report information for each production year, affix an Emission Control Label (ECL), and provide for recall and use restrictions. (Vehicle Code §§ 27156, 38391; Cal. Code Regs., tit. 13, §§ 2410-2419.4.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to forty thousand seven hundred twenty-five dollars (\$40,725.00 USD) for each strict liability violation of the SORE and OHRV Regulations, respectively, for each noncompliant SORE and OHRV engine equipment or engine. (Health & Saf. Code, §§ 43016, 43154;

Vehicle Code §§27156, 38391; Cal. Code Regs., tit.13, §§ 2400 et seq., and 2410 et seq.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, TSV was organized under the laws of Delaware as a corporation and conducted business in the State of California.
- (6) Allegations. CARB alleges TSV violated the SORE Regulation by manufacturing for sale in California, selling, offering for sale in California, or introducing, delivering or importing into California for introduction into commerce in California SORE equipment that failed to comply with the requirements of the SORE Regulation by failing to obtain an Executive Order pursuant to the certification requirements and protocols (Cal. Code Regs., tit. 13, § 2400(a)(2)), meet the exhaust emission standards or Family Emission Level (FEL) (Cal. Code Regs., tit. 13, § 2403), follow proper test procedures (Cal. Code Regs., tit. 13, § 2402), properly label the equipment (Cal. Code Regs., tit. 13, § 2404, 2406), and/or meet reporting requirements (Cal. Code Regs., tit. 13, § 2405.1, 2407, 2408), resulting in six (6) violations, as outlined in NOV #VES-2023-003. CARB alleges TSV violated the OHRV Regulation by selling, using, or introducing into commerce in California, new OHRV that failed to comply with the requirements of the OHRV Regulation by failing to apply for and receive an EO (Health & Saf. Code 43151-43153; Cal. Code Regs. § 2419.4); label with an ECL (Cal. Code Regs., tit. 13, § 2413, 2419); report production, sales, and registration information to CARB (Cal. Code Regs. § 2412); and/or comply with the testing procedures (Cal. Code Regs. § 2412, 2418), resulting in 42 violations, as outlined in NOV #VES-2023-003. CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against TSV for each and every vehicle involved in the violations.
- (7) Acknowledgment. TSV admits to the facts in paragraphs 1 through 6 but denies any liability resulting from said facts.
- (8) Consideration. 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 alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, TSV has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against TSV for the alleged violations referred to above in the Legal Background and Case Background, and TSV's

agreement to complete all terms and conditions set forth below, CARB and TSV agree as follows:

- (9) Settlement Amount. TSV shall pay a civil penalty of thirty-six thousand, two hundred fifty dollars (\$36,250.00 USD) and agrees to fund a Supplemental Environmental Project (SEP) entitled Fresno TREES Phase 4 – Malaga Recreation Park in the amount of thirty-six thousand, two hundred fifty dollars (\$36,250.00 USD), consistent with CARB’s SEP Policy, for a total settlement of seventy-two thousand, five hundred dollars (\$72,500.00 USD). TSV shall make all payments within thirty (30) calendar days from the date CARB notifies TSV of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. TSV shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to the “California Air Resources Board,” using instructions provided separately by CARB in a Payment Transmittal Form. TSV is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. At the time payment is made, TSV shall provide CARB with proof of payment including a copy of the Payment Transmittal Form to the CARB email address provided in Paragraph 15 (Notices). CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB’s duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to TSV in accordance with Paragraph 15 (Notices).
- (11) SEP Payment Method(s). TSV shall fund the SEP by wire transfer, credit card, or check, payable to the SEP Administrator/recipient Tree Fresno, using instructions provided separately by CARB in the SEP Payment Transmittal Form. At the time payment is made, TSV shall provide CARB with proof of SEP payment including a copy of the Payment Transmittal Form, to the CARB email address provided in Paragraph 15 (Notices). TSV is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to TSV in accordance with Paragraph 15 (Notices).
- (12) Prohibition Against Financial Benefit. TSV has agreed that by funding the SEP entitled Fresno TREES Phase 4 – Malaga Recreation Park, TSV will not receive any direct or indirect financial benefit, and that whenever TSV publicizes or refers to the SEP or the results of the SEP, TSV will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (13) Assignment of Rights. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit

any such recovery into its Air Pollution Control Fund. Accordingly, TSV assigns any and all rights against the SEP implementer to CARB.

- (14) Documents. TSV shall promptly email or mail the signed and dated Settlement Agreement and a copy of the Payment Transmittal Form to the address or email in Paragraph 15 (Notices). Alternatively, TSV may email the signed and dated Settlement Agreement directly to the CARB Enforcement Investigator managing this settlement.
- (15) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board
Enforcement Division / Settlement Agreements
Vehicle, Parts & Consumer Products Enforcement Branch
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov (Email proof of payment)

As to Textron Specialized Vehicles Inc.:

Rocco Sica, VP/General Counsel
1451 Marvin Griffin Road
Augusta, Georgia 30906
rsica@textron.com

As to Textron Specialized Vehicles Inc's Legal Representation:

Britt Speyer Fleming
Van Ness Feldman LLP
1050 Thomas Jefferson Street, NW
Washington, District of Columbia 20007
bsf@vnf.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address identified above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (16) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, TSV shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (17) Repeat Violations. TSV agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.

- (18) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 9 pages and 36 paragraphs.
- (19) Binding Effect. This Settlement Agreement binds TSV, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (20) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (21) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (22) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (23) Choice of Law. This Settlement 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.
- (24) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.
- (25) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (26) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.

- (27) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (28) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (29) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (30) Release. In consideration of full payment of the civil penalty and SEP, and all other undertakings above, CARB hereby releases TSV and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in Paragraph 6 (Allegations), above, and the products listed in CARB's email from the CARB Enforcement Investigator managing this settlement to TSV on March 15, 2023. This Agreement does not release TSV and its principals, officers, receivers, trustees, successors, and assignees, subsidiary, and parent corporations from any potential violation of phase-in evaporative emission standards of California Code of Regulations., title 13, section 2418.
- (31) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (32) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of forty thousand seven hundred twenty-five dollars (\$40,725.00 USD) per action under Health and Safety Code sections 43016 and 43154, for violations of the SORE and OHRV Regulations (Cal. Code Regs., tit.13, §§ 2400 et seq.; Cal. Code Regs., tit.13, §§ 2410 et seq.; Health & Saf. Code §§ 43016 and 43154). The penalty of seventy-two thousand, five hundred dollars (\$72,500) over an unspecified number of days of violation is for six (6) noncompliant SORE units and forty-two (42) noncompliant OHRV units. The per unit penalty in this case is approximately one thousand, five hundred ten dollars (\$1,510) per noncompliant unit.
- (33) Emissions. The provisions cited in Paragraph 6 (Allegations) above do not prohibit emissions above a specified level. Without information on usage and emission rates, it is not practicable to quantify the excess emissions. However, since CARB

has alleged that the SORE equipment and OHRV engines or equipment did not meet the regulatory requirements, all emissions were noncompliant.

- (34) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.
- (35) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by TSV or confidential settlement communications.
- (36) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
 - (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against TSV with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against TSV with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by TSV to CARB regarding any SORE equipment or OHRV not covered by the NOV #VES-2023-003.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.

- (v) Any criminal liability.
- (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, TSV shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of TSV or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against TSV, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. TSV is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; TSV's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that TSV's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Ellen M. Peter

Title: Chief Counsel

Date: August 22, 2023

Textron Specialized Vehicles Inc.

Signature: /S/

Name: Rocco Sica

Title: General Counsel

Date: August 1, 2023