

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB"), with its principal office at 1001 I Street, Sacramento, California, 95814 and GREEN DIESEL ENGINEERING, LLC. (hereinafter "GDE") with its principal place of business at 1032 Rig Street, Commerce Township, Michigan 48390, collectively, "the Parties." This Agreement shall be effective on the date last executed below ("Effective Date").

RECITALS

1. California Vehicle Code section 27156(c) provides, in pertinent part that "[n]o person shall install, sell, offer for sale, or advertise any device intended for use with, or as a part of, a required motor vehicle pollution control device or system that alters or modifies the original design or performance of the motor vehicle pollution control device or system."
2. Vehicle Code section 27156(h) provides, in pertinent part, that "[t]his section shall not apply to an alteration, modification, or modifying device... found by resolution of the State Air Resources Board" to either not reduce the effectiveness of a required motor vehicle pollution control device or result in emissions from any such modified or altered vehicle which are at levels that comply with existing state or federal standards for the model year of the vehicle being modified or converted.
3. California Code of Regulations, title 13, section 2222(b)(2) provides, in pertinent part, that "no person or company doing business in interstate commerce shall advertise in California any device, apparatus, or mechanism which alters or modifies the original design or performance of any required motor vehicle pollution control device or system and not exempted from Vehicle Code section 27156 unless each advertisements contains a legally adequate disclaimer".
4. In addition, California Code of Regulations, title 13, section 2225(a) provides, in pertinent part that the Executive Officer may seek fines for violations of Vehicle Code Section 27156 or other laws or regulations, as applicable.
5. As operative prior to January 1, 2017, Health and Safety Code section 43016 states, in pertinent part, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant of this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed five hundred dollars (\$500) per vehicle, portable fuel container, spout, engine, or other unit subject to regulation under this part, as these terms are defined in this division or state board regulations. Any penalty collected pursuant to this section shall be payable to the State Treasurer for deposit in the Air Pollution Control Fund."
6. As operative on or after January 1, 2017, Health and Safety Code section 43016 states, in pertinent part, "A person who violates any provision of this part, or any

order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed thirty-seven thousand five hundred dollars (\$37,500) for each such action pursuant to this part. Violations involving portable fuel containers or small off-road engines shall be subject to a civil penalty not to exceed five hundred dollars (\$500) per unit. For a manufacturer or distributor who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, the payment of the penalty and making the product compliant with applicable emission control laws may be required by the executive officer of the state board as conditions for the continued sale in this state of those products regulated by the state board pursuant to this division. Any penalty collected pursuant to this section shall be deposited in the Air Pollution Control Fund.”

7. GDE is a retailer of, inter alia, new aftermarket non-original equipment emission control parts, including, but not limited to, electronic control units.
8. CARB alleges that between January 1, 2014 and November 1, 2017, GDE, offered, and/or sold in California, supplied, distributed, offered for sale, and/or advertised in California five hundred and eighty-seven (587) calibrations, or tunes, for stock electronic control units (ECUs) (hereinafter “Subject Parts”).
9. CARB alleges that the Subject Parts altered or modified the original design or performance of devices, apparatuses, or mechanisms intended for use with, or as part of, required highway vehicles, engines, or motor vehicle pollution control devices or systems.
10. CARB alleges that supplying, distributing, selling, offering for sale, and/or advertising in California of the Subject Parts were unlawful and in violation of Vehicle Code section 27156(c) and California Code of Regulations, title 13, section 2220 et seq.
11. GDE is a limited liability corporation headquartered in Commerce, Michigan.
12. GDE promptly and fully cooperated with CARB throughout its investigation.
13. GDE has no prior enforcement record with CARB.
14. CARB alleges that if the facts described in recital paragraphs 1-10 were proven, civil penalties could be imposed against GDE as provided in Health and Safety Code section 43016.
15. GDE admits the facts described in recital paragraphs 1-10, but denies any liability arising thereunder.
16. GDE provided CARB with financial statements for the past several years, which were intended to demonstrate financial hardship for the company.

17. GDE is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with CARB. CARB 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.

TERMS AND RELEASE

In consideration of CARB not filing a legal action against GDE for the violations alleged above, and in consideration of the other terms set out below, CARB and GDE agree as follows:

1. As a condition of this Agreement, GDE shall pay the total sum of twenty-five thousand dollars (\$25,000) as a civil penalty to the **California Air Pollution Control Fund**. This penalty amount shall be payable in full within thirty (30) days of the Effective Date of this Agreement.

GDE shall send the signed Agreement and any future mailings or documents per the terms of this Agreement shall be mailed to:

**Mr. Marco Banaga
Air Pollution Specialist
California Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, California 91731**

For payments made to the Air Pollution Control Fund, GDE shall send the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

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

2. As a further condition of this Agreement, GDE has agreed to undertake a Supplemental Environmental Project (SEP) as described in Attachment B – SUPPLEMENTAL ENVIRONMENTAL PROJECT AGREEMENT – Fresno TREES SEP, (SEP Agreement), which CARB has approved as mitigation for alleged past violations and to offset a portion of the penalty, consistent with CARB's SEP Policy. Pursuant to this Agreement, GDE shall make payments according to the schedule below.
3. Upon execution of this Agreement, GDE shall pay a civil penalty and fund Fresno TREES in the total amount of twenty-five thousand dollars (\$25,000). Payment shall be made in (1) payment as described below, beginning on (October 1, 2018).

Payment Due Date:	In the Amount of and Payable to:
October 31, 2018	\$25,000 SEP Recipient

For payments made to the Sonoma Technology, Inc., GDE shall send the payment along with the attached "Supplemental Environmental Project Payment Transmittal Form" (Attachment A - 2) to:

**Sonoma Technology, Inc.
For: Fresno TREES SEP
1450 N. McDowell Blvd., Suite 200
Petaluma, California 94954**

In addition, a copy of each payment check made to Sonoma Technology, Inc. shall be mailed to:

**Mr. Marco Banaga
Air Pollution Specialist
California Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, California 91731**

4. GDE has agreed that by funding the Fresno TREES SEP, they will not receive any direct or indirect financial benefit, and that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of a CARB enforcement action.
5. Upon agreeing to the terms set forth in the SEP Agreement, and funding the Fresno TREES SEP, GDE is released of all liabilities as they relate to the Fresno TREES SEP as reflected in this underlying Settlement Agreement.
6. In the event the SEP is not fully implemented in accordance with the terms of the SEP Agreement, CARB (as the third party beneficiary) shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount waived based on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, GDE assigns any and all rights against the SEP implementer to CARB.
7. **Effect of Untimely Payment.** If any payment is more than fifteen (15) days late, the entire remaining balance becomes immediately due and payable. In addition, if the Attorney General files a civil action to enforce this settlement agreement, GDE shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

8. GDE shall not manufacture for supply, distribution, offer, or sale in California or supply, distribute, offer for sale, sell, or advertise in California any aftermarket part in violation of California Code of Regulations, title 13, section 2222 or Vehicle Code section 27156.
9. GDE has agreed to develop and implement a compliance plan. As part of the compliance plan, GDE has agreed to send a Return to Stock Notice and New Owner Card to all 587 purchasers of the Subject Parts and to work with its distributors, dealers, and customers to remove the Subject Parts. In addition, GDE will provide customers one of two options when flashing back their vehicle to stock: Customers can visit a local auto dealer and flash back their vehicle to stock which will be payable by GDE up to \$100; or GDE will ship customers a stock module which will allow customers to flash the tunes back to stock.
10. This Agreement shall apply to and be binding upon GDE and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and predecessors and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
11. Now, therefore, contingent on the payment in full by GDE to the California Air Pollution Control Fund and Fresno TREES SEP in the amounts specified above, CARB hereby releases and forever discharges GDE and its shareholders principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors ("the Released Parties") from any and all actions, causes of actions, suits, claims, and demands whatsoever in law or equity for any and all violations of California Code of Regulations, title 13, section 2220 et seq., and California Vehicle Code section 27156 that CARB may have against the Released Parties based on the facts and allegations described in recital paragraphs 1-9, above.
12. This Agreement constitutes the entire agreement and understanding between CARB and GDE concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between CARB and GDE concerning these claims.
13. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
14. Advice of Counsel. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.

15. 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.
16. 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 to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.
17. Waiver. The failure of any Party to enforce any provision of this 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 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 Agreement or otherwise provided by law.
18. Captions. The captions by which the sections and subsections of this Agreement are identified are for convenience only, and shall have no effect whatsoever upon their interpretation.
19. This Agreement may be executed by facsimile and in multiple counterparts, and the counterparts shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.
20. 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.

21. SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires the CARB to provide information on the basis for the penalties it seeks. This required 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 \$37,500.00 per unit per strict liability violation. Based on GDE's inability to pay due to financial hardship, the penalty assessed was reduced to \$50,000 for all 587 units. Furthermore, the penalty amount was based on the eight statutory factors found in CARBs enforcement policy.

The provision of law the penalty is being assessed under and why that

provision is most appropriate for that violation.

CARB alleges that the penalty provision being applied in this case, Health and Safety Code section 43016, is appropriate because GDE allegedly sold, and/or offered for sale, and/or advertised the subject non-California certified aftermarket parts that were not exempted pursuant to California Code of Regulations, title 13, section 2222.

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 not prohibit emissions above a specified level. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available. There are no testing results available that would indicate how much emissions increased as a result of the use of the uncertified aftermarket parts. However, since the aftermarket parts were not certified for sale in California, emissions attributable to them are illegal and excess. The parties had adequate opportunity to conduct such testing, but elected not to do so in the interests of settlement and because of the time and expense involved.

22. GDE acknowledges that CARB has complied with SB 1402 in prosecuting and settling this case. Specifically, CARB has considered all relevant facts, including those listed at Health and Safety Code 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 not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
23. 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 case negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain period of time, considered together with the complete circumstances of this case.
24. The penalty in this case was based in part on confidential business information provided by GDE that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and GDE that CARB does not retain in the ordinary course of business either. The penalty also reflects CARB's assessment of the relative strength of its case against GDE, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that GDE may have secured from its alleged actions.

California Air Resources Board

By: 

Name: Ellen M. Peter
Title: Chief Counsel

Date: 10/18/2018

Green Diesel Engineering, LLC.

By: 

Name: Keith Cavallini
Title: President

Date: 01 Oct 2018