

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE ("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, American Suzuki Motor Corporation ("ASMC"), with its principal place of business at 3251 East Imperial Highway, Brea, California, and Suzuki Motor Corporation ("SMC"), with its principal place of business at 300 Takatsuka-Cho Minami-Ku Hamamatsu-City, Japan. For the purposes of this Agreement, SMC and ASMC are referred to collectively as "Suzuki."

RECITALS

1. California Health and Safety Code ("HSC") section 43151(a) states: "No person who is a resident of, or who operates an established place of business within, this state shall import, deliver, purchase, rent, lease, acquire, or receive a new motor vehicle, new motor vehicle engine, or motor vehicle with a new motor vehicle engine for use, registration, or resale in this state unless such motor vehicle engine or motor vehicle has been certified pursuant to this chapter. No person shall attempt or assist in any such action."
2. HSC section 43152 states: "No person who is engaged in this state in the business of selling to an ultimate purchaser, or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently import, deliver, purchase, receive, or otherwise acquire a new motor vehicle, a new motor vehicle engine, or vehicle with a new motor vehicle engine which is intended for use primarily in this state, for sale or resale to an ultimate purchaser who is a resident of or doing business in this state, or for registration, leasing, or rental in this state, which has not been certified pursuant to this chapter. No person shall attempt or assist in any such act."
3. HSC section 43153 states: "No person who is engaged in this state in the business of selling to an ultimate purchaser, or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently sell or offer to sell, to an ultimate purchaser who is a resident of or doing business in this state, or lease or offer to lease, rent, or offer to rent, in this state any new motor vehicle, new motor vehicle engine, or vehicle with a new motor vehicle engine, which is intended primarily for use or for registration in this state, and which has not been certified pursuant to this chapter. No person shall attempt or assist in any such action."
4. HSC section 43154(a) states: "Any person who violates any provision of this article shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) per vehicle."

5. On April 29, 2010, Suzuki self-reported to ARB that it had imported and delivered for sale 2006 through 2009 model year (MY) all-terrain vehicles and 2010 MY off-highway motorcycles into California (total of 755 vehicles) that were equipped with engine control modules containing dual calibrations. Suzuki described one calibration in the applications for California certification of such vehicles but admits, and ARB has no basis to deny, that it did not describe the second calibration in its applications for California certification. Accordingly, said all-terrain vehicles and off-highway motorcycles were not certified by ARB pursuant to Article 1.5 of Chapter 2, Part 5, Division 26 of the California Health and Safety Code. The non-disclosed second calibration can only be accessed by installing an aftermarket part that is manufactured by another business entity.
6. After discovering that the all-terrain vehicles and off-highway motorcycles described in recital paragraph 5 were produced with the above-described dual calibrations, Suzuki issued a stop sale bulletin to its dealers on April 29, 2010, and timely implemented measures to quarantine the affected units so they could not be sold, and arranged to export the unsold units out of the country.
7. Suzuki fully cooperated with ARB in resolving this matter by timely self-disclosing the facts and circumstances regarding the vehicles described in recital paragraph 5 of this agreement. ARB would likely not have discovered the information that was self-disclosed by Suzuki through traditional investigatory means. Suzuki's self-disclosure saved ARB resources and negated the need to allege violations against Suzuki.
8. Suzuki has agreed to implement projects that are projected to entirely remediate the emissions associated with the uncertified calibrations.
9. Suzuki anticipates that a limited number of the all-terrain vehicles and off-highway motorcycles described in recital paragraph 5 may experience failures of the engine control modules ("ECMs") containing the dual calibrations, and Suzuki intends to replace those failed ECMs with identical ECMs containing the same calibrations to ensure the continued functionality of the vehicles within the scope of this Agreement.

TERMS AND RELEASE

In consideration of ARB not filing a legal action against Suzuki based on the facts and circumstances referred to above in recital paragraphs 5 and 9, ARB and Suzuki agree as follows:

1. Suzuki shall be liable for a penalty of three million and twenty thousand dollars (\$3,020,000), one million eight hundred and twelve thousand dollars (\$1,812,000) of which shall be suspended provided that Suzuki does not violate terms of the suspended penalty set forth in paragraph 2, below. Payment of the non-suspended portion of the penalty, one million two hundred and eight thousand dollars (\$1,208,000), is due within thirty (30) days following execution of this Agreement by both parties and shall be payable to the California Air Pollution Control Fund and addressed to:

Mr. Kerry Albert
Air Resources Engineer
Air Resources Board
1325 J Street, 17th Floor, Suite 17-25
Sacramento, CA 95814

2. **Suspended Penalty:** If, within two years of the effective date of this Agreement, Suzuki imports, delivers, sells, or offers for sale in California an ATV or OHMC that is equipped with an engine control module that contains an engine calibration that is not described in Suzuki's respective application for California certification and that also produces a higher maximum horsepower or torque than described in said application for California certification and that causes the engine's emissions to exceed applicable California limits, Suzuki shall pay to the Air Pollution Control Fund, at the address stated in paragraph 1, the suspended penalty.
3. It is agreed that if Suzuki at any time becomes insolvent, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against Suzuki, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of Suzuki the entire remaining balance becomes immediately due and payable without notice or demand.
4. Suzuki shall undertake the two projects, as set forth more fully in Addenda 1-2.
5. Suzuki shall revise certain portions of its emissions warranty language, as set forth more fully in Addendum 3. Suzuki shall retain these revisions through Model Year 2017, except that Suzuki shall be allowed to make such revisions prior to that time as necessary to comply with any changes to federal or California law and other such revisions as approved by the California Air Resources Board, which approval shall not be unreasonably withheld.
6. This Agreement shall apply to and be binding upon Suzuki and its receivers, trustees, 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.
7. Now, therefore, in consideration of the payment by Suzuki to the California Air Pollution Control Fund in the amount specified above, ARB hereby releases ASMC, SMC, and their principals, officers, directors, agents; receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, affiliates, customers, end-users, and suppliers from any and all claims that ARB may have based on the facts and circumstances described herein, including recital paragraphs 5 and 9. The undersigned represent that they have the authority to enter this Agreement.
8. This Agreement constitutes the entire agreement and understanding between ARB and Suzuki 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 ARB and Suzuki concerning these claims.

9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.

California Air Resources Board

By: 

Name: JAMES N. GOLOSTENSKI

Title: EXECUTIVE OFFICER

Date: 6-7-2012

Suzuki Motor Corporation

By: _____

Name:

Title:

Date:

American Suzuki Motor Corporation

By: _____

Name:

Title:

Date:

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California Air Resources Board

By: _____

Name:

Title:

Date:

Suzuki Motor Corporation

By: 

Name: Eiji Mochizuki

Title: BOARD MEMBER AND SENIOR MANAGING OFFICER
EXECUTIVE GENERAL MANAGER
GLOBAL PURCHASING CENTER

Date: June 25, 2012

American Suzuki Motor Corporation

By: 

Name: Takashi Iwatsuki

Title: CHAIRMAN OF ASMC

Date: June 26, 2012

ADDENDUM 1

GAS CAN EXCHANGE PROJECT

1. GENERAL DESCRIPTION

Suzuki will work with local jurisdictions to provide portable fuel containers (PFCs) that comply with current ARB regulatory requirements to replace older PFCs calculated to achieve at least 11.65 tons of reductions in emissions of volatile organic compounds (VOCs). These emissions reductions will be calculated on the basis that replacement of a 5-gallon PFC will achieve 13.85 pounds of VOC reductions and that replacement of a 2-gallon PFC will achieve 6.44 pounds of VOC reductions. The emissions reductions will be calculated assuming exchanges are made on a like-for-like basis (e.g. a new 2-gallon PFC replaces an old 2-gallon PFC).

Suzuki will:

- a. Purchase and ship to local jurisdictions at no charge new PFCs in amounts agreed upon with the local jurisdictions.
- b. Work with the local jurisdictions so that they will complete, within sixteen (16) months of the execution by both parties of the Settlement Agreement and Release ("Agreement"), replacement of the requisite number of PFCs to achieve the specified emissions reductions over the lifetime of the cans.
- c. If Suzuki (working with the local jurisdictions), has not timely completed replacement of the requisite number of PFCs in accordance with Paragraph 1.b, Suzuki will work with the local jurisdictions so that they will complete, within twelve (12) months thereafter, replacement of sufficient PFCs to achieve the emissions shortfall plus an additional ten (10) percent of the emissions shortfall.

2. PROGRAM STRUCTURE

Suzuki's terms with the local jurisdictions distributing the PFCs will provide that the local jurisdiction will:

- a. Distribute the new PFCs to end users at no charge in exchange for an older PFC that is functional at the time of the exchange.
- b. Render the older PFC unusable (by either punching or cutting a hole in the PFC or an equivalent method that is equally effective).
- c. Complete the distribution of the new PFCs within one year of receipt of the new PFCs.
- d. Complete and provide to Suzuki a form/letter within thirty (30) days after completion of the new PFC exchange certifying that the local jurisdiction completed the program

in accordance with the terms specified in Paragraph 2 and verifying the final number of new PFCs exchanged.

3. DOCUMENTATION

- a. Suzuki will prepare reports verifying the amount of emissions reductions achieved within the first six (6) months of the program, the first twelve (12) months of the program, and the first sixteen (16) months of the program, which reports shall include copies of all certifications of completion received from the local agencies by those dates.
- b. If Suzuki fails to achieve the emissions reductions specified in Paragraph 1 within sixteen (16) months following execution of the Agreement by both parties, then Suzuki shall continue to prepare status updates every six (6) months, which reports shall verify the amount of emissions reductions achieved (including the additional reductions required as ten percent of the shortfall), and shall include copies of all final reports from the local agencies. Suzuki's reporting obligation shall be terminated when Suzuki reports the achievement of the emission reductions specified in Paragraph 1.
- c. If Suzuki fails to recapture the excess emissions described in paragraph 1 of the gas can program as described above, then it will, within three (3) months of the expiration of the period specified in paragraph 1(c), acquire and retire an amount of mobile source emissions reduction credits ("MSERCs") for a specified tonnage under the South Coast Air Quality Management District program equal to the shortfall and provide documentation of such acquisition and retirement to ARB.
- d. The reports required under Paragraph 3 shall be submitted to ARB no later than 30 business days following the end of each period set forth above.

ADDENDUM 2

REPLACE FUEL LINES PART SUPPLY PROJECT

1. Within six (6) months following the execution of the Agreement by both parties, Suzuki shall discontinue its sale in the United States of replacement high permeability fuel line hoses, and instead sell only replacement fuel line hoses meeting the specifications set forth in the attached regulations, for all Model Year 2006 and 2007 Suzuki on-road motorcycles, off-road motorcycles and all-terrain vehicles.

2. These models include the following:

- DR200S
- DR650S
- DR-Z125
- DR-Z125L
- DR-Z250
- DR-Z400E
- DR-Z400SM
- GS500F
- GSX600F
- GSX750F
- GZ250
- JR50
- LS650
- LT-F250
- LT-Z50
- LT-Z90
- VS800
- VS1400
- VZ800

ADDENDUM 3

REVISED WARRANTY LANGUAGE

Suzuki will make the following modifications and additions to its Warranty Policy and Owner's Manual for ATVs and Off-Road Motorcycles in order to expand and increase awareness of information about emissions control systems, environmental regulations, prohibited modifications, and acts that could result in loss of warranty coverage.

1. WARRANTY POLICY FOR ATVs & OFF-ROAD MOTORCYCLES

Suzuki will modify the provision regarding modifications under the "What is not covered" to state:

Damage caused by alterations or modifications not approved by American Suzuki, such as use of non-Suzuki Genuine Parts or Accessories. Damage caused by modifications that would change the original vehicle specifications including, without limitation, modifications of any emission-related parts such as carburetor(s), fuel injection system components, the engine control module, air suction system components, the catalytic converter (if equipped), fuel permeation control system components (such as the fuel tank, fuel hoses, and vapor hoses), etc.

2. OWNER'S MANUAL FOR ATVs & OFF-ROAD MOTORCYCLES

Suzuki will add the following three new sections to its Owner's Manual:

- a. Suzuki will add a new section entitled "MODIFICATION" as follows.

MODIFICATION

Modification of the vehicle or removal of original equipment may render the vehicle unsafe or illegal. Obey all applicable regulations in your area including federal and state regulations regarding environmental protection. Suzuki's limited warranties may not cover damage caused by modifications that would change the original vehicle specifications including, without limitation, modifications of any emission-related parts such as the carburetor(s), fuel injection system components, the engine control module, air suction system components, the catalytic converter (if equipped), fuel permeation control system components (such as the fuel tank, fuel hoses and vapor hoses), etc.

It is strictly prohibited to modify a vehicle by installing parts that can affect emissions control, except in accordance with very specific U.S. Environmental Protection Agency and California Air Resources Board regulations.

- b. Suzuki will add a new section entitled "EMISSION CONTROL SYSTEMS" as follows.

EMISSION CONTROL SYSTEMS

Your vehicle is subject to U.S. Environmental Protection Agency (EPA) and California Air Resources Board (CARB) emission regulations. These regulations set specific standards for exhaust emission output levels and fuel permeation emissions, as well as particular servicing requirements.

Exhaust Emission Control System

The exhaust emission control system of your vehicle includes a number of parts. While the emission-related parts may vary from model to model, they generally include components of the air induction system, fuel system, ignition system, and exhaust gas recirculation system, as well as devices such as catalytic converters, emission-related sensors, and electronic control units.

Fuel Permeation Emission Control System

The fuel permeation control system of your vehicle consists of the fuel tank, fuel hoses, and fuel vapor hoses. These parts incorporate technologies to control fuel permeation emissions.

Servicing Requirements

It is essential to have your vehicle serviced according to the maintenance schedule in this manual to maintain good emission performance and to preserve your emission warranty coverage. If parts replacement is necessary, replace the parts with Genuine Suzuki parts or their equivalent. Installing improper replacement parts or performing improper adjustments can cause your vehicle to exceed emission level limits. Tampering with emission-related components in a manner which defeats or reduces the effectiveness of these components is prohibited by federal law.

- c. Suzuki will add a new section entitled "WARRANTIES" as follows.

WARRANTIES

The warranties for your ATV [off-road motorcycle] are explained in a separate warranty policy booklet given to you at the time of sale. Please read this booklet carefully so you can understand your rights and responsibilities. The following warranties are provided with your ATV [Off-Road Motorcycle]:

- New ATV [Off-Road Motorcycle] Limited Warranty
- ATV [Off-Road Motorcycle] Federal Emission Control System Limited Warranty

Suzuki limited warranties and Federal Emission Control System Limited Warranty

may not cover damage caused by modifications that would change the original vehicle specifications including, without limitation, modifications of any emission-related parts such as the carburetor(s), fuel injection system components, the engine control module, air suction system components, the catalytic converter (if equipped), fuel permeation control system components, etc.