

## SETTLEMENT AGREEMENT AND RELEASE

BAF Technologies

Page 1 of 5

### SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street Sacramento, California 95814, and BAF Technologies (BAF), 2180 French Settlement Road, Dallas, Texas 75212.

#### I. RECITALS

- (1) California Health and Safety Code section 43151(a) states, "No person who is a resident of, or 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) California Health and Safety Code 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) California Health and Safety Code 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) California Health and Safety Code section 43154(a) states, "Any person who violates any provision of this article shall be liable for a civil penalty

## SETTLEMENT AGREEMENT AND RELEASE

BAF Technologies

Page 2 of 5

not to exceed five thousand dollars (\$5,000) per vehicle." Health and Safety Code section 43016 provides for a maximum \$500 per unit penalty for violations of requirements like emissions labeling requirements for which there is no other specific penalty provided by law.

- (5) Title 13, CCR section 2472(a) states, "No person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required off-road vehicle, engine, or equipment pollution control device or system which alters or modifies the original design or performance of any such pollution control device or system."
- (6) Title 13, CCR section 2222(c) states, "No person shall advertise, offer for sale, or install a part as a motor vehicle pollution control device or as an approved or certified device, when in fact such part is not a motor vehicle pollution control device or is or approved or certified by the board."
- (7) California Vehicle Code (VC) section 27156(c) provides, in pertinent part, that "No person shall install, sell, offer for sale, or advertise any device intended for use with, or as a part of, any required motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system."
- (8) Between March 9, 2009 and November 29, 2011, BAF Technologies sold, or offered for sale four hundred and twenty-four uncertified vehicles for use or registration in California. BAF modified new, MY2009, MY2010 and MY2011 vehicles by installing compressed natural gas conversion kits on them that had not been certified by ARB, which rendered the vehicles uncertified and illegal for sale or use in California. BAF's actions violate Sections 43151 through 43153 of the California Health and Safety Code (H&SC) and Section 27156 of the California Vehicle Code. The ARB confirmed these violations through sales data obtained from BAF's customers. The ARB also confirmed that BAF had mislabeled 30 of the vehicles in violation of applicable vehicle labeling requirements.
- (9) BAF Technologies stipulates to the facts and the violations of Health and Safety Code sections 43151-43153 and Vehicle Code section 27156 and applicable emissions labeling requirements described above.

## II. TERMS AND CONDITIONS

In consideration of ARB not filing a legal action for the violations referred to above, ARB and BAF Technologies agree as follows:

- (1) BAF Technologies shall pay a penalty of Five Hundred Thirty Seven Thousand and five hundred dollars (\$537,500). The total amount of \$403,125 and will be made in two equal payments of \$201,562.50 to the

## SETTLEMENT AGREEMENT AND RELEASE

BAF Technologies

Page 3 of 5

California Air Pollution Control Fund. The first payment will be made within thirty (30) days from the effective date of this Settlement Agreement, the 2<sup>nd</sup> and final payment shall be made within one hundred and eight days (180 days) from the effective date of this Agreement. In addition, twenty five (25%) percent of the penalty amount (\$134,375) will be used towards a Supplemental Environmental Project (SEP) pursuant to the Cal/EPA Guidance on Supplemental Environmental Projects. The SEP will be determined by mutual agreement within 180 days of the effective date of this agreement and if no agreement is reached by then the \$134,375 will be paid to the Air Pollution Control Fund. Payments to the Air Pollution Control Fund shall be made by check payable to the California Air Pollution Control Fund and addressed to:

Martina Diaz  
Air Resources Board  
Enforcement Division  
Vehicle, Parts and Consumer Products Branch  
Vehicle Enforcement Section  
9528 Telstar Avenue  
El Monte, California 91731

If agreement is reached on a SEP, the payment shall also be by check made payable to the SEP project and addressed to Ms. Diaz at the above address.

- (2) BAF represents that it understands the legal requirements applicable to selling modified vehicles in California. BAF agrees that it will not acquire, modify, offer for sale or sell new, uncertified vehicles for use or registration in California and BAF promises that any vehicles in its possession not certified to California emission standards will be removed from California.
- (3) Now therefore, in consideration of the payment by BAF Technologies in the amount of \$403,125 to the California Air Pollution Control Fund, ARB hereby releases BAF Technologies and their principals, officers, agents, and successors from any and all claims ARB may have based upon the events described in recital paragraphs (8) and (9) hereinabove, including claims under Health and Safety Code sections 45151, 43152, 43153, 43154 and Vehicle Code section 27156. The undersigned represent that they have the authority to enter into this Agreement.

(1) **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This information, which is provided throughout this settlement agreement, is summarized here.

SETTLEMENT AGREEMENT AND RELEASE

BAF Technologies

Page 4 of 5

**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 vehicle penalty in this case is a maximum of \$5,000 per unit per strict liability violation. The penalty obtained in this case is approximately \$1,250 per vehicle for four hundred and twenty four vehicles for a total of \$537,500. The total penalty of \$7,500 is being assessed for 30 mislabeled vehicles discovered in August 2012. The penalty was reduced to reflect the retail price of the conversion kits and because the violator cooperated fully with the investigation.

**The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.**

The penalty provision being applied in this case is section 43154 because BAF Technologies offered for sale sold uncertified Compressed Natural Gas kits non-certified in California in violation of Health and Safety Code section 43151-43153 and Vehicle Code section 27156 described above and section 43016 because the vehicles violated applicable emission labeling requirements.

**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. However, since the vehicles were not certified for sale in California, emissions attributable to them are illegal. 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.

- (2) BAF Technologies acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 43024, 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

SETTLEMENT AGREEMENT AND RELEASE

BAF Technologies

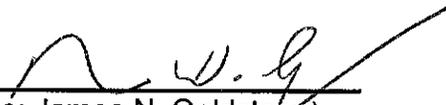
Page 5 of 5

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.

- (3) 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 cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.
- (4) The penalty was also based on confidential business information provided by BAF Technologies that is not retained by ARB in the ordinary course of business. The penalty was also based on confidential settlement communications between ARB and BAF Technologies that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and BAF Technologies and reflects ARB's assessment of the relative strength of its case against BAF Technologies, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that BAF Technologies may have secured from its actions.
- (5) BAF Technologies represents that it understands the legal requirements applicable to selling uncertified and mislabeled vehicles and engines in California.

California Air Resources Board

BAF Technologies

By:   
Name: James N. Goldstone  
Title: Executive Officer  
Date: 4/16/2013

By:   
Name: John R. Bacon  
Title: President  
Date: 3-27-13

Richard W. Corey

## **SUPPLEMENTAL ENVIRONMENTAL PROJECT FOR BAF TECHNOLOGIES**

### **Background**

Heart of Compassion (HOC) Distribution is the second largest food bank in Southern California and is located at 600 S. Maple Ave., Montebello, CA 90640. In 2011, HOC distributed 16.5 million pounds of donated food and other goods to more than 1.2 million people. HOC operates a fleet of diesel delivery trucks and refrigeration units from its facility, which is adjacent to a mobile home park and near a school.

BAF is in the business of converting delivery vehicles to run on compressed natural gas and has entered into a settlement agreement with the Air Resources Board over BAF's failure to obtain ARB's certification before selling vehicles in California. As part of that settlement, BAF has agreed to pay a penalty of \$537,500, 25% of which (\$134,375) it wishes to use to fund a Supplemental Environmental Project, pursuant to the Cal/EPA SEP Policy.

This SEP will help HOC comply with the Statewide Truck and Bus Regulation (Title 13 CCR section 2025).

### **Project Description**

BAF will provide HOC no fewer than two new 2013 (or 2012) model year CNG powered utility body Ford F-550/650 6.8 L V10 trucks. These trucks should be equipped with the BAF CNG systems and new diesel powered TRU refrigerated boxes with electric standby systems. BAF will complete this SEP within 180 days from the effective date of the final settlement agreement.

### **Project Funding**

According to the Cal/EPA SEP Policy, 25% of the BAF settlement penalty amount (\$134,375) will be used towards this SEP. If funds remain at the end of this project, BAF will remit them to ARB in the form of a check made payable to the Air Pollution Control Fund.

### **Project Reporting**

Within 30 days of the completion of the project, a corporate officer of BAF shall certify in writing to ARB that the project has been completed and provide a complete accounting of how the SEP funds were spent.

### **Penalty for Non-Compliance**

BAF's non-compliance with the terms of this SEP will constitute a breach of its settlement agreement with the ARB, entitling ARB to file an action for civil penalties for BAF's violations that are alleged in the settlement agreement.