

**U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)	
In the Matter of:)	
)	ADMINISTRATIVE
)	SETTLEMENT AGREEMENT
TESLA MOTORS, INC.)	AND AUDIT POLICY
)	DETERMINATION
)	
)	AED/MSEB #7684
)	
Respondent.)	
_____)	

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and Tesla Motors, Inc. (Respondent) having an office at 1050 Bing Street, San Carlos, CA 94070.

Respondent

1. Respondent, a Delaware corporation, manufactures, markets, develops and distributes battery powered electric motor vehicles, and Respondent is the certificate holder for Test Group 9TSLV00.0M6X.

Purpose

2. The purpose of this Agreement is to resolve 637 violations of Section 203(a) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a), and the highway vehicle and engine regulations at 40 C.F.R. Part 86.

Statutory Authority

3. Section 203(a) of the CAA, 42 U.S.C. § 7522(a), prohibits a manufacturer of a new motor vehicle or new motor vehicle engine from distributing into commerce, selling, offering for sale, introducing into commerce, or importing a new vehicle manufactured after the effective date of regulations applicable to such vehicle, unless such vehicle is covered by an EPA-issued certificate of conformity (COC).
4. Section 205(a) of the CAA, 42 U.S.C. § 7524(a), subjects any person who violates § 7522(a) to a civil penalty for each motor vehicle or engine violation. The maximum civil penalty applicable to the alleged violations is \$37,500 per vehicle or engine based on the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and the applicable regulations, 40 C.F.R. § 19.4, adjusting the statutory penalty of \$25,000 to \$37,500 for violations committed between March 15, 2004 and January 12, 2009. These dates are relevant to the subject violations, which occurred in 2009.
5. Section 216 of the CAA, 42 U.S.C. § 7550(1), defines the term “manufacturer” as any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles, or new nonroad engines, or in importing such vehicles or engines for resale, or as any person who acts for and is under the control of

any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce.

6. Section 216 of the CAA, 42 U.S.C. § 7550(2), defines the term “motor vehicle” as any self-propelled vehicle designed for transporting persons or property on a street or highway.

Regulatory Authority

7. 40 C.F.R. § 86.1801-1 applies coverage of the General Compliance Provisions for Control of Air Pollution From New and In-Use Light-Duty Vehicles, Light Duty Trucks and Complete Otto-Cycle Heavy Duty Vehicles (Subpart S) to 2001 or later model year zero emissions motor vehicles.
8. 40 C.F.R. § 86.1811-04 contains regulations implementing emission standards for all light duty vehicles (LDV) and provision applicable to zero emission vehicles (ZEVs).
9. 40 C.F.R. § 86.1803-1 defines LDV as any passenger car or passenger car derivative capable of seating 12 passengers or fewer.
10. 40 C.F.R. § 86.1702-99 defines “Zero-emissions vehicles (ZEV)” as any vehicle which is certified to produce zero emissions of any criteria pollutant under any and all possible operational modes and conditions.

Background

11. Respondent is the manufacturer of zero emissions motor vehicles.
12. On December 21, 2009 Respondent obtained an EPA COC for Test Group 9TSLV00.0M6X.
13. Prior to obtaining the EPA COC on December 21, 2009, Respondent introduced into commerce 637 model 2009 vehicles (the Subject Vehicles) that were not covered by an EPA COC.

Violations

14. Respondent is liable for 637 separate violations of Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), for the introduction into commerce of the Subject Vehicles for all the reasons disclosed by Respondent and summarized above in Paragraphs 11 through 13.

Civil Penalty

15. For the disclosed violations of the CAA and the regulations promulgated thereunder at 40 C.F.R. Part 86 arising from the introduction into commerce of the Subject Vehicles, Respondent shall pay to the United States a total of \$275,000.00 within 30 days of the date of the Effective Date of this Agreement. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717 plus the stipulated penalties as specified in Paragraphs 18 and 19 of this Agreement. Respondent agrees to pay the

amount by certified check or cashier's check payable to the "United States of America,"
and to mail the payment to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
ATTN: AED/MSEB # 7864

Respondent may also pay online at www.pay.gov. From the "Search Public Form" field, enter "SFO 1.1," click "EPA Miscellaneous Payments - Cincinnati Finance Center," and complete the "SFO Form Number 1.1."

Injunctive Relief

16. Respondent must treat the Subject Vehicles as if the Subject Vehicles are covered by a COC with respect to all of the attendant responsibilities and obligations that attach to vehicles covered by EPA issued COCs pursuant to 40 C.F.R. Parts 85 and 86.

Notice

17. A copy of the payment check(s) and the transmittal letter(s) shall be faxed to Robert G. Polin at (202) 564-0015 no later than 24 hours after mailing the payment. All correspondence to EPA concerning this Agreement shall be sent to:

Regular Mail

Robert G. Polin
U.S. Environmental Protection Agency

Courier Service

Robert G. Polin
U.S. Environmental Protection Agency

Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attn: AED/MSEB-7841

Ariel Rios South, Room 1117A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004
Attn: AED/MSEB-7841

Stipulated Penalties

18. Respondent must pay a penalty of \$1,000 per day for failure to timely pay the penalty pursuant to Paragraph 15 of this Agreement or provide proof thereof pursuant to Paragraph 17 of this Agreement.
19. Stipulated penalties under Paragraph 18 of this Agreement shall begin to accrue on the day after performance is due and shall continue to accrue until the day compliance is achieved. Stipulated penalties shall be paid in accordance with Paragraph 15 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to Robert G. Polin at the address specified in Paragraph 17 of this Agreement.

General Provisions

20. This Agreement becomes effective upon the date executed by EPA (Effective Date of the Agreement), at which time an electronic copy will be returned to Respondent.
21. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent is authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent and its agents, assigns, and successors.
22. Notwithstanding any other provision of this Agreement, upon Respondent's failure to perform, or default, or failure to comply with any term of this Agreement, EPA may refer

this matter to the United States Department of Justice to recover civil penalties pursuant to Section 205 of the CAA, 42 U.S.C. § 7524, commence an action to enforce this Agreement, recover the civil penalty pursuant to Section 205 of the CAA, or pursue any other remedies available to it. Respondent specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on the original claim of violations of the CAA and 40 C.F.R. Parts 86. Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, any applicable statute of limitation, or other provisions limiting actions as a result of passage of time. Respondent acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement. *See* 31 U.S.C. § 7701.

23. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters agreed to herein.
24. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
25. This settlement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement and the prompt and complete remediation of any violations in accordance with this Agreement.

Effect of Agreement

26. Upon completion of the terms of this Agreement, the violations described in this Agreement shall be deemed resolved by EPA. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this

Agreement, or for other violations of law, or with respect to other matters not within the scope of the Agreement. This Agreement in no way affects or relieves Respondent of responsibility to comply with other state, federal or local laws or regulations.

The following agree to the terms of this Agreement:

Settlement Agreement

In the Matter of Tesla Motors, Inc. AED/MSEB – 7864

Tesla Motors, Inc., a Delaware corporation

By:  _____

Date: 1/11/10

Typed name: Diarmuid O'Connell

Typed title: Vice President, Business Development

Federal Tax Identification Number: 91-2197729

Settlement Agreement
In the Matter of Tesla Motors, Inc. AED/MSEB – 7864

United States Environmental Protection Agency

By: *Pamela J. Mazakas* Date: *January 11, 2010*
for Pamela J. Mazakas, Acting Director
Air Enforcement Division